

Guidance relating to the UK's operational implementation of the social security coordination provisions of Part 2 of the EU Withdrawal Agreement: Citizens' Rights

11 November 2020

Introduction

1. This guidance is produced by the Department for Work and Pensions, HM Revenue and Customs and the Department of Health and Social Care.
2. This guidance covers the citizens' rights provisions, in respect of social security coordination, of Part Two of the Agreement on the Withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community (the "Withdrawal Agreement"). This is the Withdrawal Agreement as agreed at the European Council on 17 October 2019 and implemented in the United Kingdom by the European Union (Withdrawal Agreement) Act 2020.
3. The guidance is separated into three chapters.
Chapter 1: covers the determination of those who are covered by the provisions of the social security coordination Title (Title III) of the Withdrawal Agreement, and determining their rights under these provisions.

Chapter 2: covers the citizens' rights provisions in Part Two of the Withdrawal Agreement as they relate to social security coordination and provides examples as an aid to interpretation.

Chapter 3: provides a summary of the EU Regulations on social security coordination (the "EU Coordination Regulations") to assist with comprehension of the guidance on implementation of the Withdrawal Agreement.
4. The Withdrawal Agreement is available on Gov.uk [here](#).
5. This guidance explains the effect of the Withdrawal Agreement on social security coordination but it is not a definitive statement of, or a substitute for, the law itself. The purpose of this guidance is to assist staff who are responsible for implementing the Withdrawal Agreement when making determinations relating to social security coordination under the Withdrawal Agreement. This guidance only covers social security coordination elements of the Withdrawal Agreement, and so should only be used in relation to these provisions.
6. This guidance is published on GOV.UK to ensure that we are conducting our work in a transparent and open way. We publish this guidance to help people understand how we make decisions.
7. Further guidance for individuals covering the whole of Part 2 (Citizens Rights) of the Withdrawal Agreement can be found at:
<https://www.gov.uk/government/publications/withdrawal-agreement-explainer-for-part-2-citizens-rights>

About this Guidance

This guidance is an aid to implementation of the Withdrawal Agreement and will assist staff in the Department for Work and Pensions, HM Revenue & Customs, and Department of Health & Social Care when considering an application to a social security coordination department or determining eligibility under the EU social security coordination regulations (“Coordination Regulations”) from 1 January 2021.

This guidance will also be shared with the Devolved Administrations which will be responsible for the implementation of the devolved healthcare elements of the Citizens’ Rights Agreement. The Northern Ireland Department for Communities in particular are responsible for the implementation of some areas of social security within the scope of the social security coordination rules.

The EU countries are:

Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

The European Economic Area, (EEA) countries are the EU countries as well as: Iceland, Liechtenstein and Norway.

Switzerland is part of the European Free Trade Association (EFTA) but not an EU or EEA member state, and is part of the single market. This means Swiss nationals have the same rights to live and work in any of the EU and EFTA countries as their nationals.

Where EU citizens are referred to it should be noted that this includes Irish nationals who do not also hold a UK nationality. Where an EU citizen also holds a UK nationality then staff should refer to Chapter 2, Article 10, dual nationals.

The content of the examples in this document is for illustrative purposes only.

Contacts

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email EU.Agreements@dpw.gov.uk.

If you have any questions about the guidance or you think that the guidance has factual errors, then email:

The Department for Work and Pensions: EU.Agreements@dpw.gov.uk

HM Revenue & Customs: nicky.potts@hmrc.gov.uk

Department of Health & Social Care: CCMT@dhsc.gov.uk

Publication

Below is information on when this version of the guidance was published:

- Version Number: Version 1
- Published on: 11 November 2020
- First Published on: 11 November 2020
- Revisions since last publication: 0

Contents

Introduction	2
About this Guidance	3
Chapter 1 - Overview of Implementation of the Social Security Provisions of the EU Withdrawal Agreement.....	9
Summary.....	9
Interaction with the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement	9
Interaction with Irish Reciprocal Agreements	9
Determining those in scope of the EU Withdrawal Agreement for Social Security Coordination	10
Overview	10
Full Scope	13
Those in scope.....	13
Rights of those in full scope	14
Maintaining rights and falling out of scope	15
Determination approach.....	16
Examples	18
Partial Scope – Article 32(1)(a) and (2) – past contributions	20
Those in partial scope (Article 32(1)(a) & (2))	20
Rights of those in partial scope (Article 32(1)(a) & (2)).....	21
Maintaining rights and falling out of partial scope (Article 32(1)(a) & (2)).....	21
Determination approach.....	21
Examples	22
Family member derived rights.....	23
Family member definition.....	23
Those in full scope	23
Those with derived rights	23
Rights of those in derived scope	24

Maintaining rights and falling out of scope	24
Determination questions	24
Examples	25
Special healthcare provisions for the end of the transition period Article 32(1)(b)	26
Ongoing planned treatment (S2)	26
Those in scope of Article 32(1)(b)	27
Rights of those in scope Article 32(1)(b).....	27
Maintaining rights and falling out of scope Article 32(1)(b).....	27
Determination questions	27
Ongoing needs arising treatment (EHIC) (Article 32(1)(c))	28
Those in scope of Article 32(1)(c)	28
Rights of those in scope of Article 32(1)(c).....	28
Maintaining rights and falling out of scope of Article 32(1)(c).....	28
Determination questions	29
Examples	29
Partial Scope - Article 32(1)(d) Family benefits and (1)(e) sickness benefits in kind	30
Those in scope of Article 32(1)(d) & (e)	30
Rights of those in full scope of Article 32(1)(d)	30
Rights of those in full scope of Article 32(1)(e)	30
Maintaining rights and falling out of scope of Article 32(1)(d) & (e)	31
Determination approach.....	31
Examples	31
Figure 1: Summary of groups under the social security coordination provisions	33
Figure 2: Summary of EU Coordination provisions under the scopes of the social security coordination provisions.....	38
Figure 3: Summary of family member groups under the social security coordination provisions.	39

Chapter 2 – EU Withdrawal Agreement Explainer: Citizens’ rights in respect of social security coordination 40

Summary.....	40
Title I – General Provisions.....	40
Summary.....	40
Article 9 – Definitions;	41
Article 10 – Personal scope.....	43
Examples of those in scope of Title II through Article 10	45
Article 11 – Continuity of residence	46
Title II – Rights and obligations.....	46
Summary.....	46
Chapter 1 – Rights related to residence, residence documents.....	47
Chapter 2 – Rights of workers and self-employed.....	49
Title III – Coordination of social security systems	49
Summary.....	50
Definitions.....	50
Linking of the Titles.....	51
Article 30 – Persons covered	52
Article 31 – Social security coordination rules	54
Examples of those in full scope of Title III	55
Article 32 – Special situations covered	57
Article 33 – Nationals of Iceland, Liechtenstein, Norway and Switzerland.....	63
Article 34 – Administrative cooperation.....	64
Article 35 – Reimbursement, recovery and offsetting	65
Article 36 – Development of law and adaptations of Union acts.....	65
Title IV – Other provisions.....	66
Article 38 – More favourable provisions	66
Article 39 – Lifelong protection	66

Chapter 3 - EU Regulations on social security coordination	68
Summary.....	68
Scope of the EU Coordination Regulations.....	69
Aggregation.....	69

Applicable Legislation	70
Competency	70
Equal Treatment	70
Benefits paid outside of the competent Member State	71
Useful links	72
Glossary	73

Chapter 1 - Overview of Implementation of the Social Security Provisions of the EU Withdrawal Agreement

Summary

1. This chapter is intended to assist decision making in relation to the social security provisions in the citizens' rights part of the Withdrawal Agreement and associated agreements. This is mainly concerned with the determination of those who are covered by the provisions of the social security coordination Title (Title III) of the Withdrawal Agreement, and determining their rights under these provisions. It should be read in tandem with any department specific guidance covering these provisions.

Interaction with the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement

2. The EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement extend the citizens' rights provisions of the Withdrawal Agreement to nationals of these states and UK nationals who have moved between the UK and these states before the end of the transition period.
3. Provisions within the Withdrawal Agreement ensure that these three agreements work together and so references in this chapter to EU citizens, or EU member states should be read as including the citizens and states of the EEA EFTA countries (Norway, Liechtenstein and Iceland) and Switzerland.

Interaction with Irish Reciprocal Agreements

4. When considering the extent of an individual's rights and obligations under the Withdrawal Agreement it is also important to consider the interaction between the Withdrawal Agreement and other existing arrangements with Ireland. These are:
 - i. the 2019 Irish Social Security Reciprocal Agreement¹;
 - ii. the 2007 Irish Bilateral Agreement on Social Security²; and
 - iii. the 2019 Memorandum of Understanding between the UK and Ireland on the Common Travel Area³.

¹ Convention on social security between the government of the United Kingdom of Great Britain and Northern Ireland and the government of Ireland. Brought into force by SI 2019 No.622 The Social Security (Ireland) Order 2019 <https://www.legislation.gov.uk/ukxi/2019/622/made>

² Convention on social security between the government of the United Kingdom of Great Britain and Northern Ireland and the government of Ireland - https://www.legislation.gov.uk/ukxi/2007/2122/pdfs/ukxi_20072122_en.pdf

³ Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges.

5. The 2019 Irish Reciprocal Agreement covers UK and Irish nationals moving between the UK and Ireland, and their family members, and largely applies equivalent provisions to the EU Coordination Regulations for this group for cash benefits (this does not include access to healthcare). Therefore, there will be certain individuals who are covered by both the Irish Reciprocal Agreement and the Withdrawal Agreement. Where an individual is covered by both the Withdrawal Agreement and the Irish Reciprocal Agreement, the more generous provisions will take precedence.
6. Without prejudice to any other previous bilateral agreements the UK had with EU member states, staff should also be aware of other reciprocal agreements between the UK and Ireland, covering social security coordination, when considering claims from Ireland. This includes the 2007 Irish Bilateral Agreement on Social Security⁴ which principally covers persons who have worked in parts of the UK, including the Isle of Man and the Channel Islands, who are not covered by the EU Coordination Regulations.
7. The 2019 Memorandum of Understanding between the UK and Ireland on the Common Travel Area includes access to healthcare services and affords British citizens residing in Ireland and Irish citizens residing in the UK the right to access emergency, routine and planned publicly funded health services in each other's state, on the same basis as citizens of that state. In addition a reciprocal healthcare agreement in the context of the Common Travel Area is being negotiated but this will be separate from the Withdrawal Agreement arrangements.

Determining those in scope of the EU Withdrawal Agreement for Social Security Coordination

Overview

8. The UK left the EU on 31 January 2020 and entered a transition period (lasting until 31 December 2020). The Withdrawal Agreement creates a cohort who, following the end of the transition period, will continue to be covered by the EU Coordination Regulations. From this point, operational teams need to determine if a person is either in scope of the social security coordination provisions of the Withdrawal Agreement, and so apply the EU Coordination Regulations, or if they

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800280/CTA-MoU-UK.pdf

⁴ Convention on social security between the government of the United Kingdom of Great Britain and Northern Ireland and the government of Ireland - https://www.legislation.gov.uk/ukxi/2007/2122/pdfs/ukxi_20072122_en.pdf

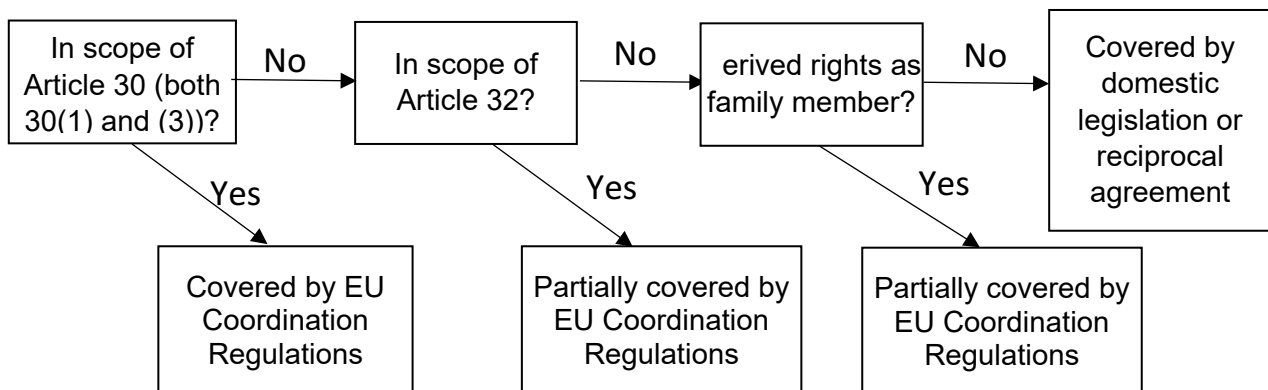
are not and so come under UK domestic legislation and any reciprocal agreements which are in place.

9. The Withdrawal Agreement creates three different cohorts that are in scope of the social security coordination provisions, and will continue to be subject to the EU Coordination Regulations to varying degrees.
 - **Full scope:** Those in full scope (in personal scope of Article 30 of the Withdrawal Agreement) who will continue to be subject to the EU Coordination Regulations in full, while they continue to satisfy the requirements of the Withdrawal Agreement.
 - **Partial scope:** Those in partial scope (in scope of Article 32 of the Withdrawal Agreement) who will be covered by the EU Coordination Regulations for certain scenarios and benefits.
 - **Derived rights as a family member:** Those with derived rights as family members of those in full personal scope, will be covered by the EU Coordination Regulations for certain scenarios in their capacity as a family member.

10. This section outlines the general principles of determining an individual’s eligibility under the Withdrawal Agreement across government. Departmental and other operational guidance should also be consulted. All other eligibility requirements, including competency determinations, will continue to be carried out during the benefit application or Portable Document⁵ process or when accessing a service.

Considering an application

11. When determining if an individual is in scope of the social security coordination provisions it is necessary to consider if they are in full scope under Article 30 of the Withdrawal Agreement (including those who fall under Article 30(3) because they have residence rights as a result of being within scope of Article 10 of the Withdrawal Agreement). If not then, where relevant, it is necessary to consider if they are in partial scope (Article 32 of the Withdrawal Agreement) or have derived rights as family members. If an individual is not in scope under any of these tests, then their social security situation will be dependent on domestic legislation or any reciprocal agreement between the UK and the relevant state. There may be slight variations in this order for certain benefit lines.



⁵ These include PDA1, PDS1s, E101s and E106s which are issued by HMRC

When to assess

12. An assessment to establish whether an individual is in scope of the Withdrawal Agreement for Social Security Coordination should be undertaken either during a new claim or application process or at a change of circumstance, or when accessing a service. It should be undertaken if the entitlement which is being claimed relates to the EU Coordination Regulations, and there is an indication that the individual would be in scope of the Withdrawal Agreement, as set out below.

New claims

13. When processing a new claim for a social security coordination benefit, or an application for a portable document such as a PDA1 or S1, where there is an indication of a cross-border element, then it should be determined whether the individual is in scope of the social security coordination provisions of the Withdrawal Agreement. Indications of a cross-border element could include, but are not limited to:
 - i. An EU citizen who is resident in the UK and holds a status under the EU Settlement Scheme, or a UK national who is resident in the EU;
 - ii. A third country national whose partner (marriage/civil partnership/durable relationship) is a person listed above;
 - iii. An individual who is in receipt of a UK social security benefit in the EU which is not exported under domestic regulations or a reciprocal agreement with the relevant state;
 - iv. An EU citizen with evidence of contributions in the UK before 1 January 2021, or a UK national with evidence of contributions in the EU before 1 January 2021;
 - v. A UK/EU dual national with evidence of residence or contributions in both the UK and EU before 1 January 2021;
 - vi. A third country national with evidence of residence or contributions in both the UK and EU before 1 January 2021.

These factors do not definitively mean that an individual is in scope of the social security coordination provisions but indicate that a full check should be carried out to determine whether the individual is in scope.

Change of circumstances

14. An individual's status under the Withdrawal Agreement for social security coordination purposes is not fixed and an individual can move between cohorts, or into or out of scope over time based on changes to their circumstances. Therefore, staff will need to ensure that they confirm an individual's status under the Withdrawal Agreement where they are informed of a change of circumstances.

Determining an individual is not covered by the Social Security Coordination provisions

15. If an individual does not meet the conditions to be covered by the social security coordination provisions of the Withdrawal Agreement, then the individual's eligibility for the social security benefits, or whether they have to pay UK National Insurance contributions, will be determined under domestic law or any reciprocal agreement with the relevant state.
16. In reaching this decision all criteria for being treated as in scope should be considered, including derivative rights through a family member.

Full Scope

17. Individuals in full scope of the social security coordination provisions of the Withdrawal Agreement are those covered by Article 30 (including those in scope of Article 30 through Article 10) of Part Two of the Agreement (citizens' rights). This group will continue to be covered in full by the EU Coordination Regulations while they remain in one of the situations listed under Article 30.

Those in scope

18. Those in full scope of the social security coordination provisions are primarily those in a cross border situation, one involving both the UK and an EU member state, on 31 December 2020 and who continue to be in a cross-border situation at the relevant time. An individual can be in a cross-border situation covered under Article 30(1) or under Article 30(3) of the Withdrawal Agreement.
19. Article 30(3) brings into scope of the social security coordination provisions all those in scope of Article 10 who would not otherwise be in scope of Article 30. This means that EU citizens with a right of residence in the UK, and UK nationals with a right of residence in the EU, under the Withdrawal Agreement, will be in full scope of the social security coordination provisions.
20. Those covered by the social security coordination provisions under Article 30(3) are:
 - EU citizens lawfully residing in the UK, or who have a right to reside in the UK, on 31 December 2020. This must be residence in accordance with EU law, which includes those residing as a worker, self-employed, jobseeker, self-sufficient person with comprehensive sick insurance, a person with permanent residence, or a student with comprehensive sickness insurance.
 - UK nationals lawfully residing in an EU member state, or who have a right to reside in an EU member state, on 31 December 2020. This must be residence in accordance with EU law.
 - UK/EU dual nationals who, by 31 December 2020, have exercised their free movement rights under EU law before acquiring citizenship in the host country.

- EU citizens who reside in an EU member state and work as frontier workers in the UK by 31 December 2020 and continue to do so after that date.
- UK nationals who reside in the UK and work as frontier workers in an EU member state by 31 December 2020 and continue to do so after that date.
- The family members of those listed above whose residence in the host state⁶ is facilitated by the primary right holder under EU law⁷. For a full explanation of family members under Article 10⁸ see Chapter 2. This includes:
 - Spouse, civil partner or durable partner where the relationship was established by 31 December 2020;
 - Dependent direct relative in the ascending line (parent or grandparent) where the relationship was established by 31 December 2020;
 - Dependent direct relatives in the descending line (children, grandchildren) either where the relationship was established by 31 December 2020, or where they were born to or legally adopted by the primary right holder after 31 December 2020;
 - Extended family members whose residence in the host state had been facilitated by the primary right holder by 31 December 2020. This includes where it has been applied for by 31 December 2020.

21. Those covered by Article 30(1) are those who are in one of the situations listed below on 31 December 2020 while they continue to be:

- EU citizens who reside in the UK or who reside in the EU and are subject to the legislation of the UK;
- EU citizens who are subject to the legislation of an EU member state but are employed or self-employed in the UK (for example posted workers⁹);
- UK nationals who reside in the EU or who are residing in the UK and subject to the legislation of an EU member state;
- UK nationals who are subject to the legislation of the UK but are employed or self-employed in an EU member state (for example posted workers);
- Asylum seekers, stateless persons or refugees in one of the situations listed above;
- Third country nationals who are in one of the situations listed above who are also in scope of regulation No 859/2003¹⁰.

Rights of those in full scope

⁶ The host state is the UK for EU citizens and the EU member state of residence at the end of the transition period for UK nationals. See Chapter 2, Article 9(c) for a full definition.

⁷ To note, this is different to family members of those in scope of Article 30(1) who will not themselves be in full scope, but who will have rights derived in their capacity as a family member.

⁸ It should be noted that the definition of family members under Article 10 differs from that under Article 30. See Figure 3.

⁹ It will be for the individual states to determine if a posting can continue after the end of the transition period. Where the posting is allowed to continue the individual will be in scope of Article 30.

¹⁰ Regulation 859/2003 applies to non-EEA and Swiss nationals who are not otherwise covered by the EU Coordination Regulations (i.e. as a family member, survivor, stateless person or refugee), where they are in a cross-border situation involving the UK and a Member State. This is primarily third country nationals that are residing in one EU member state and working in another.

22. Those in full scope of the Withdrawal Agreement will be covered by the EU Coordination Regulations while they remain in one of the situations listed above. They will continue to be subject to only one country's legislation at a time, to receive any benefit they already receive, and be able to apply for new benefits as long as they meet the eligibility requirements. See Figure 2 for an overview of these provisions.

Maintaining rights and falling out of scope

23. Those in full scope will maintain their rights as long as they continue to be in one of the categories listed above.

24. Those in scope of Article 30 because they are covered by Article 10 will remain in scope while they maintain a right of residence under the Withdrawal Agreement in the host state. An individual with a permanent right of residence in the host state can move away for up to 5 years and not fall out of scope, as they will maintain a right of residence in the host state. An individual who is yet to acquire a right of permanent residence under the Withdrawal Agreement can move away for up to 6 months in a 12 month period, or for a single period of up to 12 months with an important reason (e.g. pregnancy, serious illness or training) and not fall out of scope, as they will maintain a right of residence in the host state. Absence of a longer duration is permitted for compulsory military service.

25. This means that an individual, who is in scope of Article 30(3) of the Withdrawal Agreement, could spend part of the year outside the host state and remain in scope, as long as they did not exceed the permissible absence period.

26. Under the Withdrawal Agreement, these absence periods are the minimum permissible periods that states may apply before residence is lost. Individual states are able to set their own maximum permissible absence periods, which may allow for absences longer than those set out in the Withdrawal Agreement. For example, the UK has decided to allow continuous absences of up to 2 years for any reason, rather than the 6 months provided for under the Withdrawal Agreement, for those yet to acquire permanent residence, who have leave to enter or remain under the EU Settlement Scheme, before the right of temporary residence is lost. Note, however, that, in the case of the UK, if absences exceed the limits prescribed in the Withdrawal Agreement a person will not be able to qualify for a permanent right to reside (indefinite leave to remain also known as settled status).

27. For those in scope of Article 30(1) it is possible to move between the different situations listed under Article 30(1), and maintain rights under the provision, as long as they continue to be in one of the situations listed without interruption. This means, for example, that a UK national living in one EU member state at the end of the transition period who moves to live in a different EU member state after the end of the transition period continues to be in scope, as they will still be resident in **an** EU member state.

28. It is also possible for a person who is no longer in one of the situations covered by Article 30(1) to remain within scope of Article 30 if they are in scope of Article 10 and continue to have a right of residence in the host state in accordance with the Withdrawal Agreement.
29. Family members who have been brought into scope of Article 10 acquire an independent right under Article 10 and so remain in scope while they retain a right of residence in accordance with the Withdrawal Agreement in the host state. They will be covered by the EU Coordination Regulations while they remain in scope.
30. If an individual ceases to be in any of the situations listed above, then they will be out of scope and cannot be brought back into scope again by moving into one of the situations listed above.

Determination approach

31. When determining if an individual is in full scope of the social security coordination provisions it is necessary to consider their nationality and residence record from 31 December 2020 to the date of application:
- a) A UK national who was resident in an EU member state by 31 December 2020 and has continued to reside in an EU member state since would be considered in scope.
 - b) A UK national who resided in an EU member state before 1 January 2021 has a right of residence in that state, and has not been absent since for longer than the period specified (5 years where a person has permanent residence), would be considered in scope. Proof of registration in an EU member state residence scheme would be a good indicator of this.
 - c) An EU citizen who was resident in the UK by 31 December 2020 and has continued to reside in the UK or has maintained a right of residence in the UK since, would be considered in scope. Proof of status under the EU Settlement Scheme would be a good indicator of this. There are other ways this can be evidenced if an individual has not yet applied to the EU Settlement Scheme.
32. It is also necessary to consider if an individual is subject to the legislation of another country (UK national subject to the legislation of an EU member state or an EU citizen subject to the legislation of the UK):
- a) A UK national who has been paying contributions in the EU since 31 December 2020, and continues to do so, would be considered in scope.
 - b) An EU citizen who has been paying contributions in the UK since 31 December 2020, and continues to do so, would be considered in scope.
 - c) A frontier worker who was resident in the UK while working in an EU member state, or who was resident in an EU member state while working in the UK, at the end of the transition period would be considered in scope.
 - d) A UK/EU dual national who has resided or made contributions in both the UK and EU before 1 January 2021 would be likely be considered in scope.

33. Or a posted worker on a posting at the end of the transition period:
- a) A posted worker who maintained residence in the UK while working in an EU member state, and began their posting by the end of the transition period would be considered in scope of the social security provisions of the Withdrawal Agreement while they continued their posting.
They would be identifiable by their PDA1 form issued by the UK. The Withdrawal Agreement does not protect the rights of a posted worker to continue their posting in the host country after the end of the transition period. It will be for the individual EU member state to determine if the worker can continue their posting after the end of the transition period.

 - b) A posted worker who maintained residence in the EU while working in the UK, and began their posting by the end of the transition period would be considered in scope of the social security provisions of the Withdrawal Agreement. They would be identifiable by their PDA1 form issued by the EU member state.
Although the Withdrawal Agreement does not protect the rights of a posted worker to continue their posting in the host country after the end of the transition period, the UK will not differentiate posted workers from other workers. So those posted workers in the UK by the end of the transition period will be able to apply for an immigration status under the EU Settlement Scheme allowing them to stay.
34. If an individual is not in one of the categories listed above, it is then necessary to consider if they are in full scope as a family member of an individual in personal scope of Article 10. It is necessary to establish:
- i. the link to the primary right holder on 31 December 2020 (not applicable for future children), and at the point where they joined them in the host state, including proof of dependency where necessary;
 - ii. whether they have joined them in the host state and when; and
 - iii. whether the primary right holder was in full scope at this time.
35. As it could be several years after they join the primary right holder that a claim, or an application for a document such as a PDA1 or S1, under the Withdrawal Agreement is made (e.g. an application for benefits), it is important to establish the right of the primary right holder at the time the family member joined them and that the family member has maintained a right of residence in the host state since.
36. As family members in scope of Article 10 can also apply to the EU Settlement Scheme in the UK, or to EU member state residence schemes, a status under these schemes would be a good indicator.

37. As the UK cannot be a host state for a UK national and an EU member state cannot be a host state for an EU citizen, these groups would not be brought into full scope as family members in their state of nationality.

Examples

Examples: Full Scope – Article 30(3) (Article 10) (personal Scope)

38. Those in full scope of Article 30(3) (Article 10) include;

- a) A UK national lawfully residing and working in Spain on 31 December 2020.
- b) A French national who is lawfully residing in the UK and self-employed on 31 December 2020.
- c) A UK national who retired to live in Spain in 2017, where he receives a State Pension from the UK. On 31 December 2020 he is lawfully residing in Spain and is on holiday in the UK for Christmas.
- d) A German national who lawfully resided in the UK between 2012 and 2020. In July 2020, after acquiring indefinite leave to remain in the UK via the EUSS, they moved to live and work in Germany. They will fall out of scope after 5 years' continuous residence outside of the UK.
- e) A Belgian national who resides in Belgium with their family on 31 December 2020, and travels to the UK each week for work.
- f) A UK national who moved to live and work in Malta in 2003 and subsequently acquired UK/Maltese dual nationality. They are residing in Malta on 31 December 2020 as a UK/Maltese dual national. They would continue to be in scope if they subsequently returned to the UK or moved to another EU member state. As they cannot lose their right of residence in Malta (except through serious misconduct) they will continue to be in scope for their lifetime.
- g) A Romanian national who, after working in Romania for 37 years, moved to live in the UK in 2019, ahead of reaching state pension age in 2022. They are self-sufficient, have comprehensive sickness insurance and are residing in the UK on 31 December 2020.

Examples: Full Scope – Article 30(3) (Article 10) (family members)

39. Those in full scope of Article 10 as a family member of those in personal scope of Article 10 include;

- a) An Australian national who is lawfully residing in the UK on 31 December 2020 with their Swedish national partner who is self-employed in the UK.
- b) A Peruvian national who is lawfully resident in Finland on 31 December 2020, living with their UK national civil partner, who is employed in Finland.

- c) A UK national who is living in the UK on 31 December 2020 and then moves to Italy in 2022 to join their UK national partner (their residence having been facilitated by Italy in accordance with Italy's legislation), who has been living and working in Italy since 2020. They have been in a durable relationship since 2017.
- d) A child born to a UK national in 2022, where the UK national parent was lawfully resident in Greece on 31 December 2020 and continued to reside and work in Greece, and where the child lives with the UK national parent in Greece.
- e) A Japanese partner of a UK national, who in August 2020 moves with their UK national partner to Malta and whose residence has been facilitated by Malta in accordance with its legislation. The couple are in a durable relationship and have been living together for 4 years. They are both residing and working in Malta on 31 December 2020. In 2023, while continuing to lawfully reside in Malta they legally adopt a UK national child. This child will also be in scope of this provision.

Not in full scope - Article 30(3) (Article 10) (family members)

- f) A UK national who is living and working in the UK on 31 December 2020. In July 2021 they start a relationship with a UK national who is living in France and in 2022 they get married. If the UK national moves to join their spouse in France, then they will not be brought into full scope of Article 10 as the relationship was not established by 31 December 2020.

Examples: Full Scope – Article 30(1)

40. Those in full scope of Article 30(1) include;

- a) A UK national who is posted by their UK employer to work temporarily in Austria by 31 December 2020. They continue to be subject to the legislation of the UK, but will be in scope of Article 30(1) for the duration of their posting. It will be for Austria to determine if they are permitted to continue their posting in Austria after 31 December 2020.
- b) A Croatian national who has previously only worked in Croatia and is retired in the UK on 31 December 2020. They receive a State Pension from Croatia based on the years that they worked there.
- c) A Portuguese national who is not working but is resident in the UK with their family on 31 December 2020.
- d) A UK national who receives a job offer to work in Estonia shortly before 31 December 2020 and moves with their family to live in Estonia on 15 December 2020.

- e) A Canadian national residing in the UK with their family on 31 December 2020, and who travels to Belgium during the week for work.
- f) An Argentinian national who resides in Ireland with their family and works in Ireland and the UK, regularly travelling between the two. An Argentinian national in the same situation but whose situation was purely confined to Ireland would not be covered as they would not be in a situation involving the UK and an EU member state.

Examples: Maintaining rights (falling out of scope)

41. A UK national who moved to live and work in France in 2014, after working in the UK for 30 years. She is living in France at the end of the transition period and registers for residence under the French Withdrawal Agreement registration scheme. As she has been living in France in accordance with EU law for over 5 years she has a permanent right to reside in France. She has full rights under the social security provisions. In 2021 she retires and decides to return to the UK where she lives for the following 3 years. In 2024 she decides that she wants to return to France as the weather is better. While there was a break in her residency in France she has maintained a permanent right of residence as has not been absent for more than 5 years and therefore will continue to have full rights under the social security provisions as she is still in scope of Article 10.
42. An Italian national is living and working in the UK on 31 December 2020. She has been lawfully resident in the UK since 2019 and so does not yet have a right of permanent residence in the UK. In 2022 she is offered a job in France and moves there. She is now resident in France. In 2025 she looks to return to the UK. As she has been absent for longer than 2 years she no longer has a right of residence in the UK and so is no longer in full scope of the social security provisions.

Partial Scope – Article 32(1)(a) and (2) – past contributions

43. The Article 32 provisions cover individuals who have exercised their free movement rights before the end of the transition period (1 January 2021) but who are either not, or are no longer, in one of the situations listed above (full scope).

Those in partial scope (Article 32(1)(a) & (2))

44. Those covered by these provisions are those not in full scope who are:
- UK nationals, stateless persons and refugees who have periods of residence, insurance or employment in an EU member state before 1 January 2021 and are residing in the UK on 31 December 2020;
 - EU citizens, stateless persons and refugees, who have periods of residence, insurance or employment in the UK before 1 January 2021 and are residing in the EU on 31 December 2020;

- Third country nationals who have periods of residence, insurance or employment in the UK and EU before 1 January 2021;
- UK/EU dual national with periods of residence, insurance or employment in the UK and EU before 1 January 2021.

Rights of those in partial scope (Article 32(1)(a) & (2))

45. Article 32 does not bring the individual into full scope of the EU Coordination Regulations. Those in scope of this provision will continue to be able to rely on these past periods of residence, insurance or employment completed in the UK or EU for the purpose of rights and obligations derived from these periods. This includes the ability to aggregate periods of insurance or residence in one state to meet minimum periods of entitlement in another. It also entitles the individual to receive the benefit as a result of these past periods in accordance with the EU Coordination Regulations, and so provides for export and payment at the same rate as those who receive the benefit in the country of payment.
46. For the purpose of aggregation, periods completed both before and after the end of the transition period can be used, where the right is at least partially derived from periods completed before. This is primarily for the purpose of meeting minimum qualifying periods, e.g. for contributory benefits.
47. Article 32(2) also covers sickness benefits in kind for those in scope where entitlement is derived from receipt of the relevant benefit. This includes reciprocal healthcare entitlements such as access to healthcare on an equal treatment basis, S1, EHIC and S2, funded by the competent state¹¹.

Maintaining rights and falling out of partial scope (Article 32(1)(a) & (2))

48. Individuals will continue to be covered by these provisions while they continue to derive rights from the past periods of residence, insurance or employment. They will not be in scope to access reciprocal healthcare rights if they are not at that point relying on a member state benefit.

Determination approach

49. When determining if an individual is in partial scope of the Social Security Coordination provisions based on past periods, for entitlement to contributory benefits (Contribution-based Jobseeker's Allowance, Contributory Employment and Support Allowance, Maternity Allowance), or for State Pensions (aggregation and uprating), it is necessary to consider their nationality and their contribution record before 1 January 2021.
- a) A UK national with contributions in an EU member state before 1 January 2021 would be considered in scope.
 - b) An EU citizen with contributions in the UK before 1 January 2021 would be considered in scope.

¹¹ See Chapter 2 for further information on the categories of benefits covered by Article 32(2).

- c) A third country national with contributions in the UK and EU before 1 January 2021 would be considered in scope.
- d) A UK/EU dual national with contributions in the UK and EU, contributions in the UK and residence in the EU, or contributions in the EU and residence in the UK before 1 January 2021 would be considered in scope.

50. When determining if an individual is in partial scope of the Social Security Coordination provisions for entitlement to residency or employment based benefits, the same questions can be asked but based on residence or employment before 1 January 2021.

51. When determining whether the individual is in partial scope for entitlement to reciprocal healthcare, it is important to know the current state of residence as well as any previous contributions paid in the UK and the EU and their duration.

Examples

52. Those in partial scope based on their past contributions include:

- a) A Slovenian national who worked and has paid or been credited with National Insurance contributions for 8 years in the UK between 2001 and 2009, and is living and working in Slovenia on 31 December 2020. While they will not be in full scope of the social security provisions, they will still be able to rely on these past periods for rights derived from them. In this case they will be able to rely on these contributions when they come to claim their State Pension in 2024, and so will be able to aggregate periods of insurance in Slovenia to meet the minimum qualifying period in the UK, and their UK State Pension will increase in line with those in the UK while they live in the EU.
- b) A UK national who had lived and worked in the Republic of Cyprus for 3 years between July 2017 and August 2020, where they have paid or been credited with national insurance contributions. In August 2020 they return to the UK and are living and working in the UK on 31 December 2020. After working in the UK for a year they become unemployed. While they will not be in full scope of the social security provisions they will still be able to rely on these past periods of contributions in the Republic of Cyprus for rights derived from them. In this case they will be able to rely on these past contributions to meet the minimum period of insurance in the UK to claim unemployment benefits (Contributory Jobseeker's Allowance).
- c) An Estonian national who has worked and has paid or been credited with National Insurance contributions in the UK between 1975 and 2014, and then moved to Latvia where they lived and worked, paying contributions, between 2014 and 2021. They decide to retire in Estonia in 2022 and apply to claim their UK State Pension. The UK will pay their UK State Pension based on the qualifying years worked in the UK, and this will increase in line with those in the UK while they live in the EU. The UK will also be competent for their healthcare in

kind (S1 form insured) as competency lies with the state in which they were insured the longest as they are not receiving a State Pension from the state of residence.

Latvia will be able to aggregate periods of insurance in the UK to meet the minimum qualifying period of 15 years to pay their State Pension. If the Estonian national decided to move to Latvia in 2024 then competency for the individual's healthcare would switch to Latvia as the state of residence.

Family member derived rights

53. The family members of those in scope of the Social Security Coordination provisions, whether in full (Article 30(1) or 30(3)), or partial scope (Article 32(1)), will have derived rights and obligations in their capacity as family members.

Family member definition

54. The definition of family members under the social security provision of the Withdrawal Agreement (Article 30(1) and 32) is taken from the EU Coordination Regulations, unless specified in the competent state's legislation. Full guidance on family member definitions is set out in individual benefit guidance, but this standardly covers:

- Spouses or civil partners;
- Children under 18;
- Children over 18 who are dependent;

It should be noted that the definition of family members under Article 10 differs from that under Article 30. See Figure 3.

Those in full scope

55. As covered in the full scope section, family members of those in full scope of Article 10 will be brought into full scope once they join the primary right holder in the host state, where their residency has been facilitated by the primary right holder.

56. This group will have full rights under the EU Coordination Regulations while they maintain a right of residence in the host state.

Those with derived rights

57. Family members of those in personal scope of the social security coordination provisions (Article 30(1) and (3)), who are not in full scope themselves, will be covered by the provisions to the extent they derive rights in their capacity as a family member.

58. This cohort includes:

- Family members of those in scope of Article 10 who do not themselves fall under Article 10 because:

- the family link was not established by 31 December 2020 (excluding future children);
 - they have not joined the primary right holder in the host state; or
 - whose residence in the host state was not facilitated by the primary right holder. For example, a UK national residing in the UK with their French spouse (who is in full scope).
- Family members of those in full scope of Article 30, or in partial scope of Article 32.

Rights of those in derived scope

59. Those with derived rights as family members will continue to be covered by the social security provisions of the Withdrawal Agreement only to the extent they derive their rights and obligations under the EU Coordination Regulations in their capacity as a family member of the primary right holder.

60. They will not though have an independent right under these provisions and are not considered in full scope of the social security provisions. This is a more restrictive right than family members who are brought into full scope under Article 10.

61. As stated above all other eligibility requirements, including competency determinations, will continue to be carried out during the benefit application or Portable Document¹² process or when accessing a service.

Maintaining rights and falling out of scope

62. The rights of those deriving rights in their capacity as a family member continue while the person continues to meet the definition of a family member under the EU Coordination Regulations and their rights and obligations are derived in this capacity. This means that, for example, rights would cease once a child reaches the age of majority and is no longer dependent on their parent.

63. Rights are also only maintained while the primary right holder remains in personal scope of the Citizen's Rights provisions. If they cease to be in scope, then the family member would no longer be able to derive rights from them.

Determination questions

64. When determining if an individual has family member derived rights from a person in scope of Article 30, it is necessary to establish:

- a) If the individual is a family member under the EU Coordination Regulations for the benefit. This includes any dependency checks where relevant.
- b) If the primary right holder is in personal scope of the Social Security Coordination provisions, and in which capacity (full/partial scope).

If the individual meets these tests, then they would be considered in scope of this provision, to the extent they derive rights in this capacity.

¹² These include PDA1, PDS1s, E101s and E106s which are issued by HMRC

Examples

Examples: Family member derived rights (difference between Articles 10 and 30)

65. A UK national is living and working in Poland on 31 December 2020. Their spouse (married) and two children, all UK nationals, are living in the UK. While they continue to live in the UK they will have derived rights as family members (under Article 30), and will be able to derive rights in this capacity. This includes rights for family benefits, where Poland is the state of primary competence, and healthcare benefits in kind. As the parent living in the UK is unemployed Poland has primary competence for Child Benefit for the children and for the family's EHIC if they access healthcare while temporarily in an EU member state.
- i. In 2021 one of the children ceases to be dependent, and so would no longer be covered by this provision. This means that they will no longer be able to derive rights or obligations under the EU Coordination Regulations in their capacity as a family member and Poland would cease to be responsible for their healthcare benefits in kind.
 - ii. In 2024 the spouse living in the UK and the youngest child decide to join the UK national partner in Poland, while the youngest child is still a minor. As their residence in Poland has been facilitated by the UK national in full scope, they are also brought into full scope in their own right as family members under Article 10. It also means that if the family link breaks, for example the child reached the age of majority and is no longer dependent, they will remain in full scope provided that they continued to reside in accordance with the Withdrawal Agreement.
66. A UK national is living with their Bulgarian national spouse (civil partnership) (self-employed) in the UK, on 31 December 2020. The Bulgarian national is in full scope of Article 10 and 30. The UK national is not brought into full scope as their residence in the UK is not facilitated by their Bulgarian partner, and so they do not have full rights under the social security provisions. They would though have derived rights in their capacity as a family member, for example they would be entitled to UK insured needs arising healthcare while temporarily in an EU member state (EHIC).
- i. If the partner was instead a Namibian national (a third country national), and their residence in the UK had been facilitated by their Bulgarian national partner they would instead be in full scope of Article 10 and have full independent rights under the social security provisions.

Examples: Article 30

67. Those with derived rights as a family member of someone covered under Article 30 include:

- a) The UK national civil partner, residing in the UK on 31 December 2020, of a UK national who is resident in the Czech Republic on 31 December 2020, while they continue to reside in the UK.
- b) The Dutch national partner and children of a Dutch national, who resides in the Netherlands on 31 December 2020 and travels to work in the UK during the week and is subject to UK legislation.
- c) The Bolivian national family members, of a UK national who is undertaking a 2- year posting in Hungary on 31 December 2020. They all live together in Hungary.
- d) A UK national is living in Portugal on 31 December 2020. His ex-partner and 2 children are living in the UK on 31 December 2020. As the eldest child is no longer dependent on their parents they cannot derive rights from their UK national parent in Portugal. The younger child, who is 15, can derive rights as a family member while they continue to be dependent on their parents.
- e) The German spouse of a French national, who are both living in France on 31 December 2020. As the French national worked in the UK for 25 years before 31 December 2020 the German spouse would be entitled to survivor's benefits based on these periods of past contributions following the death of the French national.

Examples: Maintaining rights and falling out of scope

- 68. A UK national spouse of a Danish national, who are both residing in the UK on 31 December 2020, would continue to have derived rights as a family member while the family member link continues. If the couple were to separate, e.g. following a divorce, the family member link would be interrupted and the UK national would no longer have derived rights in their capacity as a family member.
- 69. The family of a Finnish national, who works and resides in the UK on the 31 December 2020, subject to UK legislation, continues to reside in Finland after 31 December 2020. They can derive rights as family members of the Finnish national parent who is working in the UK. In 2022 the eldest child turns 18, starts work and moves to live with friends. They are no longer considered dependent on the parent and so cease to be able to derive rights in their capacity as a family member.

Special healthcare provisions for the end of the transition period Article 32(1)(b)

Ongoing planned treatment (S2)

70. Article 32(1)(b) protects the right to receive state funded planned treatment in another country, under the EU Coordination Regulations, for those who have requested pre-authorisation or started planned treatment before the end of the transition period.

Those in scope of Article 32(1)(b)

71. Those covered by these provisions are those not in full scope of Article 30 and who are:

- UK nationals/EU citizens/third country nationals for whom the UK is the competent state for their healthcare and whose treatment started or who applied for pre-authorisation for treatment in an EU member state before 1 January 2021;
- UK nationals/EU citizens/third country nationals for whom an EU Member State is competent for their healthcare and whose treatment started or who applied for pre-authorisation for treatment in the UK or a different EU member state before 1 January 2021.

Rights of those in scope Article 32(1)(b)

72. This provision does not bring the individual into full scope of the EU Coordination Regulations.

73. Those in scope will be able to enter and exit the country where they will receive their treatment, including when this requires multiple courses of treatment. They will not be able to use an EHIC to access unplanned treatment unless they also fall into scope of Article 32(1)(c). An accompanying person will be entitled to travel with them but will not be entitled to any reciprocal healthcare benefits.

74. Patients who are not EU or UK nationals may require an entry visa.

Maintaining rights and falling out of scope Article 32(1)(b)

75. Individuals who are receiving treatment pursuant to Article 32(1)(b) will fall out of scope of that provision when their authorised course of treatment is completed.

Determination questions

76. When determining if an individual is in scope of Article 32(1)(b) it is necessary to consider whether the treatment started or authorisation was sought before 31 December 2020. This can be evidenced through the S2 application date and/or certificate which is issued by the NHS Business Services Authority (BSA).

77. The Devolved Administrations Health Boards will determine the clinical eligibility criteria for S2 holders¹³ who are residents of Scotland, Northern Ireland and Wales.

¹³ <https://www.nhs.uk/using-the-nhs/healthcare-abroad/going-abroad-for-treatment/what-is-the-s2-route>

Example

78. A UK national lives in England and applies in December 2020 for treatment in Germany for a condition. As long as they meet the clinical eligibility criteria for treatment abroad and they are ordinarily resident in the UK, NHS England will approve their treatment and NHS BSA will issue them with an S2 certificate for the period of treatment. The treatment commences in Germany in January 2021. The treatment includes three rounds of treatment which need to take place every two months in January 2021, March 2021, May 2021. The UK national can return to the UK in between their treatment.

Ongoing needs arising treatment (EHIC) (Article 32(1)(c))

79. Article 32(1)(c) covers persons on a temporary stay at the end of the transition period for needs arising treatment.

Those in scope of Article 32(1)(c)

80. Those covered by these provisions are those not in full scope who are:

- UK nationals/EU citizens/third country nationals for whom the UK is the competent state for their healthcare and are on a temporary stay in an EU Member State which started on or before 31 December 2020;
- UK nationals/EU citizens/third country nationals for whom an EU Member State is competent for their healthcare and are on a temporary stay in the UK which started on or before 31 December 2020.

81. Whether someone is on a stay is fact dependent. The two most likely situations in which someone might be on a stay are:

- Tourists on holiday; and
- Students studying a course abroad (providing their habitual residence has not changed).

Rights of those in scope of Article 32(1)(c)

82. This provision does not bring the individual into full scope of the EU Coordination Regulations. Those in scope will, though, continue to be able to access needs arising treatment as necessary in the country they are in at the end of the transition period. They will not be able to use their EHIC in other member states.

Maintaining rights and falling out of scope of Article 32(1)(c)

83. Individuals who are on an ongoing trip will continue to be covered by these provisions until the stay in that state comes to an end. For tourists, their stay will end when they return home or when they go to another state. Students, by contrast, are likely to be on a stay until their studies finish. If the student, for example, returns to their habitual residence over a holiday period, the stay will not come to an end so they will remain in scope.

84. They may also fall out of scope and their EHIC entitlement will no longer be valid if they start a new course of studies or if they become employed in the country they are studying in.

Determination questions

85. When determining if an individual is in partial scope of the Social Security Coordination provisions based on an ongoing stay at the end of the transition period, it is necessary to consider who is the competent state for healthcare and which country the individual was in at the end of the transition period or, for students, when their course of studies commenced and finishes.

Examples

86. A UK national is on a four year undergraduate course in the Netherlands at the end of the transition period. They remain financially dependent on their family in the UK and rent student accommodation when in the Netherlands. The UK is competent for their healthcare as they remain habitually resident in the UK and they are therefore entitled to a UK-issued EHIC which they use to access treatment in the Netherlands. They travel back to the UK regularly to see their family; this does not terminate their stay in the Netherlands.
- i. In November 2022 they have an accident in the Netherlands, and they use their EHIC to access treatment on equal terms as Dutch nationals.
 - ii. In December 2022 the student is visiting friends in Germany and has another accident. They attempt to use their EHIC to claim reimbursement but the NHSBSA cannot provide reimbursement because Germany is not the country they are studying in. The student will have to cover the cost of their treatment in Germany or rely on comprehensive private health insurance.
 - iii. The UK national then decides to stay in the Netherlands after the end of their course, and begins working there. As they will also have Article 10 rights (residence) they will come into full scope of Article 30 (SSC rights) with the Netherlands now competent for their healthcare. They will be entitled to full SSC rights under Article 30.
87. A UK national is on Christmas holiday in Luxembourg in December 2020. On the 2nd of January they drive to Brussels to take the Eurostar to travel back to the UK and while in Brussels they have an accident. They attempt to use their EHIC to access emergency services in Belgium. Belgium rejects their EHIC as they fail to present evidence that they were in the country by 31 December 2020. If, however Belgium accepts the EHIC to provide treatment, once they apply to the NHSBSA to claim reimbursement their claim is rejected if they cannot provide evidence they were in an ongoing trip to Belgium by 31 December 2020.

Partial Scope - Article 32(1)(d) Family benefits and (1)(e) sickness benefits in kind

88. The Article 32 provisions covering family benefits (1)(d) and family member derived rights (1)(e), cover those who are not in full scope of the Social Security Coordination provisions, but are entitled to benefits under the EU Coordination Regulations at the end of the transition period. While they are not personally in a cross-border situation at the end of the transition period (31 December 2020) they have an entitlement to family benefits (1)(d) and derived rights as family members (e) derived from the EU Coordination Regulations. The scope of those covered by these provisions are the same but the entitlements under each differ.

Those in scope of Article 32(1)(d) & (e)

89. Those covered by these provisions are those not in full scope who are:

- UK nationals, stateless persons and refugees who reside in, and are subject to, the legislation of the UK, and whose family reside in an EU member state on 31 December 2020.
- EU citizens, stateless persons and refugees who reside in, and are subject to the legislation of, an EU member state, and whose family reside in the UK on 31 December 2020.
- Third country nationals who are covered by regulation 859/2003 who are in one of the situations listed above.

This covers the situation where an individual receives a benefit from either the UK or EU member state in which they do not reside as a result of their link to a family member (as set out above). This is primarily children or the other parent or guardian of the child for whom a family benefit is claimed, though it is not a requirement for the family to include children. A spouse can be covered by Article 32(1)(e) even where there are no children and no family benefits paid.

Rights of those in full scope of Article 32(1)(d)

90. This provision does not bring the individual into full scope of the EU Coordination Regulations. Those in scope of Article 32(1)(d) will, though, continue to be entitled to family benefits where the entitlement existed on 31 December 2020. The benefit does not need to be in receipt at this point but the eligibility must exist. This means that the provision does not cover family benefits payable in respect of children born or legally adopted after the end of the transition period.

Rights of those in full scope of Article 32(1)(e)

91. This provision does not bring the individual into full scope of the EU Coordination Regulations. Those in scope of Article 32(1)(e) will, though, continue to be entitled to derived rights as family members where the entitlement existed on 31 December 2020. Benefits, including benefits in kind (healthcare) do not need to be in receipt at this point but the eligibility must exist. This means that the provision does not cover derived rights as family members payable in respect of children born, or spousal relationships formed, after the end of the transition period.

Maintaining rights and falling out of scope of Article 32(1)(d) & (e)

92. The rights under these provisions continue while the eligibility to the benefit continues under the EU Coordination Regulations and national legislation. Therefore, if the individual ceases to be entitled to family benefits under national legislation, or ceases to rely on the EU Coordination Regulations in order to be entitled, the individual will no longer be covered by Article 32(1)(d) or (e). This includes if the family members moved to join the other family members in the host state. This would result in the award no longer being made under the EU Coordination Regulations, and so would no longer be in scope of Article 32(1)(d) or (e). Once an individual ceases to be in scope of Article 32(1)(d) or (e) they cannot come back into scope of the provisions.
93. Changes between primary and secondary competence do not result in an interruption in entitlement. This means that an individual will continue to be covered by Article 32(1)(d) or (e) if primary competence switches from that individual's state of residence to the state in which the individual's family resides, and the individual's state of residence becomes the state of secondary competence.

Determination approach

94. When determining if an individual is in partial scope of the Social Security Coordination provisions for Article 32(d) or (e) it is necessary to consider the nationality, residency and family links at the end of the transition period and whether these factors have been maintained.
95. It is necessary to establish the following:
- a) Was the family link established by 31 December 2020; were the children born by 31 December 2020 or the partner relationship established (either marriage or civil partnership) by 31 December 2020?
 - b) Was the family in one of the situations set out above on 31 December 2020, and have they remained resident in the respective states since this point?
- If the individual meets both these tests, then they will be considered in scope of this provision.

Examples

96. Those in partial scope as family members include:
- a) A UK national who works and resides in the UK on 31 December 2020, subject to UK legislation. Their Dutch partner and 2-year-old child reside in the Netherlands on 31 December 2020. As the Dutch partner is unemployed the UK has primary competence for any family benefits for the family members living in the Netherlands. The Netherlands has secondary competence. In this case the UK pays Child Benefit for the child, and the Netherlands will pay a differential supplement if required.
 - i. In 2022 the Dutch partner starts working in the Netherlands, at which point the primary competence for any family benefits switches to the

Netherlands, and the Netherlands would now pay the Dutch family benefit for the child. The UK has secondary competence. As the rate of the Dutch family benefit is lower than the Child Benefit in the UK, the UK will pay a differential supplement as a top up. This does not count as an interruption for being in scope of this provision.

- ii. In 2023 the Dutch partner stops work and primary competence for family benefits switches back to the UK, who starts paying Child Benefit again. Secondary competence switches to the Netherlands.
 - iii. In 2024 the couple have a second child. As this child was born after 31 December 2020, benefits in respect of that child do not come under Article 32(1)(d) and any award will be in line with domestic legislation.
- b) A Luxembourg national who works, paying contributions, and resides in Luxembourg on 31 December 2020, while their UK national partner resides in the UK. As the UK national partner is not working, Luxembourg has primary competence for their family benefits.
- c) A UK national lives and works in the UK while their Slovakian partner lives with their two children in Slovakia on 31 December 2020. As the Slovakian partner is unemployed the UK has primary competence for family benefits payable in respect of their children living in Slovakia. They are in scope of this provision while their family resides in Slovakia.
- i. In 2022 the UK national is offered a job in Slovakia and moves to live there with their partner and children. At this point they are no longer covered by this provision because they are no longer entitled to UK Child Benefit under either the EU Coordination Regulations or national legislation.
 - ii. In 2024 the UK national moves back to the UK and starts working there. As there was an interruption to the entitlement the UK national is no longer in scope of this provision and so the UK would not pay Child Benefit for the children living in Slovakia.

Figure 1: Summary of groups under the social security coordination provisions. This table is intended to summarise the groups within each scope under the social security coordination provisions. It is illustrative and so should not be viewed in isolation, and as such does not list all situations or requirements under these cohorts.

Scope	Groups	Special considerations /clarifications	Falling out of scope	Coverage while in scope
Full Scope (Article 10 – residence)	<ul style="list-style-type: none"> • EU citizens lawfully resident in the UK by 31 December 2020. • EU citizens with a right to reside in the UK by 31 December 2020. • EU citizens working in the UK and habitually resident in the EU by 31 December 2020 (frontier worker). • UK nationals lawfully resident in an EU member state by 31 December 2020. • UK nationals with a right to reside in an EU member state by 31 December 2020. • UK nationals working in an EU member state and habitually resident in the UK by 31 December 2020 (frontier worker). • UK/EU dual nationals who exercised free movement rights before acquiring the nationality of the host state. • Family members of those above whose residence in the host state has been facilitated by the primary right holder. 	<ul style="list-style-type: none"> • Residence or a right to reside must be in accordance with EU law. • For core family members (including durable partners) the relationship must have been established by 31 December 2020 or be the children of the primary right holder. • Extended family members, must have had their residence facilitated by the host state, or have applied for their residence to be facilitated by 31 December 2020. 	<ul style="list-style-type: none"> • Lose residence rights in the host state (5-year absence for those with permanent residence). • Residence rights restricted through conduct – e.g. a deportation order. 	<ul style="list-style-type: none"> • Full coverage – continue to be covered by EU Coordination Regulations in full.
Full Scope (Article 30 – SSC)	<ul style="list-style-type: none"> • Those in scope of Article 10 (above). • EU citizens who are habitually resident in the UK on 31 December 2020 and are subject to the legislation of an EU member state. • EU citizens who are subject to the legislation of the UK on 31 December 2020. 	<ul style="list-style-type: none"> • Article 30 is based on whether there is a UK/EU cross-border element at the end of the transition period. There must be a link to the UK and EU. 	<ul style="list-style-type: none"> • Cease to be in scope of Article 10 or in a cross-border situation as listed in Article 30(1). 	<ul style="list-style-type: none"> • Full coverage – continue to be covered by EU Coordination

	<ul style="list-style-type: none"> • UK nationals who are habitually resident in an EU member state on 31 December 2020 and are subject to the legislation of the UK. • UK nationals who are subject to the legislation of an EU member state on 31 December 2020. • Third country nationals who are habitually resident in the UK and subject to the legislation of an EU member state on 31 December 2020. • Third country nationals who are habitually resident in an EU member state and subject to the legislation of the UK on 31 December 2020. 			Regulations in full
Partial Scope – Article 32, (1)(a), (2) past contributions	<ul style="list-style-type: none"> • UK nationals who have been subject to the legislation of an EU member state before 1 January 2021. • EU citizens who have been subject to the legislation of the UK before 1 January 2021. • Dual UK/EU dual nationals who have been subject to the legislation of the UK and an EU member state before 1 January 2021. • Third country nationals who have been subject to the legislation of the UK and an EU member state before 1 January 2021. 	<ul style="list-style-type: none"> • Only covers those who are not in full scope. • Covers periods completed before and after 1 January 2021, as long as reliance on periods before 1 January 2021. 	<ul style="list-style-type: none"> • Not relevant as long as they continue to rely on these past periods 	<ul style="list-style-type: none"> • Partial coverage – continue to be covered by EU Coordination Regulations for rights derived from the past periods
Partial Scope – Article 32(1)(b) Healthcare provisions for the end of the transition period	<ul style="list-style-type: none"> • UK nationals/EU citizens/third country nationals for whom the UK is the competent state for their healthcare and whose treatment started or who applied for pre-authorisation for treatment in an EU member state before 1 January 2021; • UK nationals/EU citizens/third country nationals for whom an EU Member State is competent for their healthcare and whose treatment started or who applied for pre-authorisation for treatment in the UK or a different EU member state before 1 January 2021. 	<ul style="list-style-type: none"> • Only covers those who have requested pre-authorisation or started planned treatment before 1 January 2021. • Does not bring the individual into full scope. • Those in scope will be able to enter and exit the country where they will 	<ul style="list-style-type: none"> • Once the authorised treatment is completed and reimbursed for, individuals will fall out of scope. • They will not be able to use an 	<ul style="list-style-type: none"> • Partial coverage – conditional and time limited coverage by EU Coordination Regulations for planned healthcare (S2).

<p>(planned treatment)</p>		<p>receive their treatment, including when this requires multiple courses of treatment.</p> <ul style="list-style-type: none"> • An accompanying person will be entitled to travel with them but will not be entitled to any reciprocal healthcare benefits. • Patients who are not EU or UK nationals may require an entry visa. 	<p>EHIC to access unplanned treatment unless they also fall into scope of Article 32(1)(c).</p>	
<p>Partial Scope – Article 32(1)(c) Healthcare provisions for the end of the transition period (EHIC for visitors and students)</p>	<ul style="list-style-type: none"> • UK nationals/EU citizens/third country nationals for whom the UK is the competent state for their healthcare and who are on a temporary stay in an EU Member State which started before 1 January 2021; • UK nationals/EU citizens/third country nationals for whom an EU Member State is competent for their healthcare and who are on a temporary stay in the UK which started before 1 January 2021. • The two most likely situations in which someone might be on a stay are: <ul style="list-style-type: none"> ○ Tourists on holiday; and ○ Students studying a course abroad (providing their habitual residence has not changed) 	<ul style="list-style-type: none"> • Entitled to use the EHIC to access needs arising treatment in a specific State, on equal terms as people insured in that country. 	<ul style="list-style-type: none"> • Visitors: as soon as they leave the country they were visiting at the end of the transition period. They will not be able to use their EHIC in other states. • Students: they may fall out of scope or change their entitlements if their course ends, they become 	<ul style="list-style-type: none"> • Partial coverage – conditional and time limited coverage for needs arising treatment. (EHIC)

			employed or the state of residence becomes competent for their healthcare.	
Partial Scope – Article 32(1)(d) Family benefits	<ul style="list-style-type: none"> • EU citizens who are not in full scope: reside in the EU before 1 January 2021 and are subject to the legislation of an EU member state, and whose family reside in the UK before 1 January 2021. • UK nationals who are not in full scope: reside in the UK before 1 January 2021 and are subject to the legislation of the UK, and whose family reside in an EU member state before 1 January 2021. • Third country nationals, who reside in and are subject to the legislation of either the UK or an EU member state before 1 January 2021, and whose family reside in the opposing state. 	<ul style="list-style-type: none"> • Covers those who are not in full scope. • Only covers where there is an entitlement to family benefits by 31 December 2020, so does not cover children born after 31 December 2020. • Covers changes between primary and secondary competence. 	<ul style="list-style-type: none"> • If the entitlement to family benefits stops – child no longer dependent. • If the cross-border element ceases – EU Coordination Regulations no longer apply. 	<ul style="list-style-type: none"> • Partial coverage – continue to be covered by EU Coordination Regulations for family benefits, where entitlement existed at 31 December 2020.
Partial Scope – Article 32(1)(e) Family benefits		<ul style="list-style-type: none"> • Only covers those who are not in full scope • Only covers where there is an entitlement to derived rights as family members by 31 December 2020, so does not cover children born after 31 December 2020. • Covers changes between primary and secondary competence. 	<ul style="list-style-type: none"> • If the entitlement to family benefits stops – child no longer dependent. • If the cross-border element ceases – EU Coordination Regulations no longer apply. 	<ul style="list-style-type: none"> • Partial coverage – continue to be covered by EU Coordination Regulations for derived sickness benefits, where entitlement existed at 31 December 2020

<p>Family member derived rights and obligations</p>	<ul style="list-style-type: none"> • Family members of those listed as in full scope of Article 30 within the meaning of the EU Coordination Regulations. • Family members of those listed as in full scope of Article 10 who have either not joined the primary right holder in the host state or whose residence in the host state has not been facilitated by the primary right holder. • Family members of those in partial scope (Article 32(1)(a)). 	<ul style="list-style-type: none"> • This could include the UK national partner of an EU citizen, covered by Article 10, who are living together in the UK. 	<ul style="list-style-type: none"> • If the primary right holder is no longer in full scope • If the family link breaks, e.g. Child is no longer dependent or following divorce. 	<ul style="list-style-type: none"> • Partial coverage – continue to be covered by EU Coordination Regulations for rights and obligations derived in their capacity as a family member of primary right holder
--	--	--	--	--

Figure 2: Summary of EU Coordination provisions under the scopes of the social security

coordination provisions. This table is intended to summarise the EU Coordination Regulation provisions covered by the different scopes under the Withdrawal Agreement provisions. It is illustrative and so should not be viewed in isolation. For all benefits individuals must continue to meet all other existing eligibility criteria.

Relevant claims under EU Coordination Regulation	Benefit lines	Full Scope (Article 30(1) or 10)	Partial Scope past periods – Article 32	Partial Scope family benefits – Article 32(1)(d)	Partial Scope derived family member rights – Article 32(1)(e)	Family member derived rights under the WA	Partial Scope persons on a stay at end of transition period – Article 32	Partial Scope planned healthcare – Article 32
Contribution based benefits (aggregation)	JSA – C ESA – C State Pension (uprating in EU)	X	X – where relying on past periods					
Family benefits (paid in EU)	Child Benefit Child Tax Credit	X		X		X		
Death grant	Bereavement support payment	X	X			X		
Maternity Benefit	Maternity allowance	X	X					
Non-contributory cash sickness benefits (paid in EU)	PIP (Daily living component) DLA (care component) Attendance allowance Carers allowance	X				X		
Sickness benefits in kind	EHIC – unplanned overseas treatment S1 cover – in country treatment S2 – planned healthcare	X	X – where the UK is competent due to past periods		X	X	X – EHIC while on an ongoing trip in member state X- EHIC while on ongoing studies	X– S2 until the completion of treatment
Coordination of contribution payments	PDA1 – demonstration of applicable legislation	X				X		

Figure 3: Summary of family member groups under the social security coordination provisions.

This table is intended to summarise the different family member scopes under the social security coordination provisions. It is illustrative and so should not be viewed in isolation.

	Article 10		Article 30 and 32	
Relationship to primary right holder	Close family members , as defined by the EU Free Movement Directive: Partners (marriage/civil partnership durable relationship ¹⁴) Dependents in the descending line (children under 21 or dependent) Dependents in the ascending line ¹⁵ Relationship must be established by 31 December 2020 ¹⁶ .		Extended family members whose residence has been facilitated by the primary right holder	Close family members as defined under EU Coordination Regulations (EC 883) ¹⁷ Partners (marriage/civil partnership) Dependents in the descending line (Children under 18 or dependent)
Residence on 31 December 2020	Lawful residence in the host state facilitated by 31 December 2020	Resided outside of the host state on 31 December 2020.	Lawful residence in the host state facilitated by 31 December 2020 ¹⁸	Residency on 31 December 2020 does not impact on whether the family member is in scope of the provisions
Scope under the social security coordination provisions (Article 30)	In full scope.	In full scope once they have joined the primary right holder in the host state. Will have derived rights before this.	In full scope	In scope to the extent that they derive rights in their capacity as a family member.
Impact of break in family link (e.g. child no longer dependent)	Will remain in full scope while they maintain a right of residency in the host state.	Will remain in full scope, if they have joined the family member in the host state before the break, while they maintain a right of residency in the host state.	Will remain in full scope while they maintain a right of residency in the host state.	Will no longer be in scope of the social security coordination provisions as have no independent rights under these provisions. ¹⁹

¹⁴ There is no definitive definition of “durable relationship” under EU law, so immigration guidance should be considered. This sets out that there should be evidence of “the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship)” <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

¹⁵ Dependent parents must be dependent on the primary right holder at the point they seek to join them in the host state, they do not need to be dependent on 31.12.20.

¹⁶ The exception to this is children, who can be born to or adopted by the primary right holder after 31 December 2020.

¹⁷ The definition of family member is the definition as set out in the EU Coordination regulation, except where the competent state has a different definition, in which case the definition of family member as set out in the domestic social security legislation of the competent state should be used.

¹⁸ Those who have applied for residency in the host state in accordance with EU law, by 31 December 2020, and are awaiting a decision are also in scope of this provision.

¹⁹ The exception is survivor’s benefits which can be paid to the partner of the deceased primary right holder.

Chapter 2 – EU Withdrawal Agreement Explainer: Citizens’ rights in respect of social security coordination

Summary

1. Part Two of the Withdrawal Agreement covers the citizens’ rights provisions that will take effect following the end of the transition period²⁰, 31 December 2020. These provisions seek, amongst other things, to maintain the social security coordination provision coverage of UK nationals and EU citizens, and certain third country nationals, and their family members, in a cross-border situation between the UK and EU at the end of the transition period. It also seeks to protect a limited set of rights relating to social security coordination, for those that have lived or worked in the UK and EU before the end of the transition, based on those past periods, period, and who are no longer in a cross-border situation.
2. The overarching purpose of the Withdrawal Agreement is to protect individuals’ rights as they were before the end of the transition period, for those in scope of the provisions of the Withdrawal Agreement, for as long as they remain in scope. The Withdrawal Agreement does not create new rights that did not exist under EU law at the end of the transition period and, unless specified otherwise, the limitations and conditions as set out in EU law apply to the rights and obligations in Part Two.
3. This guidance covers the citizens’ rights provisions in Part Two of the Withdrawal Agreement as they relate to social security coordination and provides examples as an aid to interpretation. This guidance should only be used in relation to social security coordination.
4. While the social security coordination provisions are covered by Title III of Part Two, the other Titles of Part Two are also examined due to their link to Title III.

Title I – General Provisions

Summary

5. Title I of Part Two of the Withdrawal Agreement sets out the beneficiaries of the citizens’ rights provisions, i.e. those in personal scope of Title II. These are primarily UK nationals and EU citizens, who have exercised their right to reside or work in either the EU or UK respectively under EU law before the end of the transition period, and their family members. Certain family members who join the right holder in the host state after the end of the transition period, including

²⁰ There are slight differences for the provisions relating to the EU Settlement Scheme which will not fully take effect until after the grace period. The grace period covers 6 months from the end of the transition period until 30 June 2021.

children born after the end of the transition period, will also be in personal scope of Title II.

Article 9 – Definitions;

6. Article 9 defines the key terms associated with the citizens' rights provisions in Part Two. Read together with Article 10 and Article 13 (Title II) it allows us to identify who is covered by Title II of the Withdrawal Agreement. The definitions in Title I and II are based on those in the EU Free Movement Directive (Directive 2004/38)²¹, and these differ from those in Title III, on Social Security Coordination. For example, for Title III, residence is interpreted in the context of the EU Coordination Regulations, and the definition of family member is that contained in those Regulations rather than in the general definitions in Article 9.
7. **Article 9 (a) Family members** – Family members, as relates to Title I and II, are those defined by Article 2(2) of EU Free Movement Directive. Guidance is provided on this in existing departmental guidance²². The definition covers:
 - spouse or civil partner of an EU citizen;
 - direct descendants of the EU citizen, or of their spouse or civil partner, who are:
 - under the age of 21; or
 - dependent upon the EU citizen or their spouse or civil partner.
 - dependent direct relatives in the ascending line of the EU citizen or their spouse or civil partner²³, and is irrespective of nationality where they are related to a UK national or EU citizen.
8. Dependency as it relates to children aged over 21 or relatives in the ascending line can include dependency on financial grounds. It can also include serious health grounds which strictly require the personal care of the dependant by the EU citizen.
9. Article 9(a)(ii) reflects the case law in relation to derivative rights i.e. *Chen* – the primary carer of an EU citizen child who is exercising free movement rights in the EU as a self-sufficient person, where requiring the primary carer to leave the EU would prevent the EU citizen child exercising those free movement rights. This provision under the Withdrawal Agreement also covers other family members whose residence in the host state is required so as to not prevent the EU citizen child exercising those free movement rights.

²¹ EU Free Movement Directive, 2004/38/EC. <https://www.legislation.gov.uk/eudr/2004/38>

²² DWP decision maker guidance, meaning of family members – 073252, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/911538/dmgch703.pdf

²³ Extended family members, including those in a durable relationship as opposed to a spouse or civil partner (not falling within the definition of family member in Art 9) have a right of residence under Art 10 where their residence has been facilitated before the end of the transition period (or they have applied for such facilitation). Durable partners are also covered by Article 10(4) if they seek to apply for residence in the host state after the end of the transition period.

For example, where there is a Chen child and the primary carer also has another TCN child whereby if that child did not get leave it would effectively mean that the Chen child would be forced to leave the UK indefinitely to keep the family together.

10. **Article 9 (b) Frontier workers** – Frontier workers encompass those citizens that pursue an economic activity in a different state to their state of residence, in accordance with EU law²⁴. The Treaty on the Functioning of the European Union (“TFEU”), or Article 45 (free movement workers) and Article 49 (freedom of establishment). A frontier worker is an EU citizen who is exercising their free movement rights in the UK by working in paid employment on a full-time or part-time basis. Whether self-employed persons are considered to be frontier workers will depend on whether they are established as defined by the case law²⁵. A person can be a frontier worker in more than one state.
11. **Article 9 (c) Host state** – For UK nationals and their family members exercising their right of residence in accordance with EU law in an EU Member State before the end of the transition period, and continuing to reside there, the host state would be that EU Member State. For EU citizens and their family members exercising their right of residence in the UK in accordance with EU law before the end of the transition period, and continuing to reside there, the host state would be the UK. Residence in a secondary EU Member State by an EU citizen is not within scope of the Withdrawal Agreement. For example, a Portuguese national who is resident in Spain at the end of the transition period would not be in scope of the Withdrawal Agreement.
12. Exercising their right of residence in accordance with EU law under Article 9(c) means an EU citizen or a UK national who lawfully resides in the host state under EU free movement law, primarily EU Free Movement Directive and Articles 21, 45 and 49 TFEU. This does not include family members of UK nationals who reside in the UK in accordance with EU law, for example beneficiaries of CJEU cases C-34/09, Ruiz Zambrano²⁶ or C-370/90, Surinder Singh²⁷.
13. **Article 9 (d) State of work** – This is used to indicate the State in which an EU citizen or UK national has rights as a frontier worker under the Withdrawal Agreement. For EU citizen frontier workers in the UK at the end of the transition period this is the UK. For UK national frontier workers, it is the Member State/s in which they are frontier working.

²⁴ The Treaty on the Functioning of the European Union (“TFEU”), or Article 45 (free movement workers) and Article 49 (freedom of establishment)

²⁵ DWP decision maker guidance, definition of worker, C070063

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811596/dmgch0701.pdf

²⁶ Ruiz Zambrano (C-34/09) <http://www.bailii.org/eu/cases/EUECJ/2011/C3409.html>

²⁷ Surinder Singh (C-370/90) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61990CJ0370->

Article 9 (e) Rights of custody –Rights of custody in respect of this title are defined in Article 2 of Regulation 2201/2003²⁸ and cover the rights and duties relating to the care of a child and the right to determine the child’s place of residence. Custody can be acquired by a court judgment, through the operation of law or through an agreement having legal effect.

Article 10 – Personal scope

14. Without prejudice to the provisions of Title III, Article 10 lists the categories of people who are covered by the personal scope of Title II of the Withdrawal Agreement. This protects the residence and associated rights of those persons who have residence rights under EU law at the end of the transition period and continue to exercise those rights. This allows such persons to broadly continue to live their lives after the transition period as they did before.
15. It should be noted that Article 30(3) and Article 30(4) operate such that where someone does not or no longer falls within scope of Article 30(1), those who continue to fall within the personal scope of Article 10 will nevertheless continue to have the associated rights listed under the social security coordination provisions at Title III. This also applies to their family members and survivors. Persons listed under Article 10 will therefore continue to be in full scope of the social security coordination provisions while they remain in one of the situations listed under Title II.
16. The categories of person listed under Article 10 include;
 - i. EU citizens residing lawfully²⁹ under EU law in the UK (Article 10(1)(a)), and UK nationals residing lawfully under EU law in the EU (Article 10(1)(b)) at the end of the transition period, and who continue to reside there. For UK nationals this residence must be in the host state and does not cover onward movement to another EU member state.
 - ii. EU citizens who are working as frontier workers in the UK (Article 10(1)(c)), and UK nationals who are working as frontier workers in the EU (Article 10(1)(d)) at the end of the transition period and continue to do so.
 - iii. Family members of those in Articles 10(1)(a)-(d), as defined by Article 9(a), who are:
 - a. lawfully resident in the host state at the end of the transition period (Article 10(1)(e)(i)) and who continue to reside there. This includes *Chen* carers; or
 - b. living outside the host state at the end of the transition period, at the point where they join a person covered by Article 10(1)(a)-(d) in the host state after the end of the transition period. The relationship must have existed before the end of the transition period and still exist when the person seeks to join in the host state (Article 10(1)(e)(ii)). Parents of the

²⁸ EU Free Movement Directive, 2004/38/EC: <https://www.legislation.gov.uk/eur/2003/2201/contents>

²⁹ Residing lawfully for Title I refers to an individual exercising an EU law right to reside in the host state.

right holder must be dependent on the right holder at the point they seek to join the right holder, but are not required to be dependent at the end of the transition period.

- iv. Children born to, or legally adopted by, persons listed under Article 10(1)(a-d), either before or after the end of the transition period (unless the child is already a citizen of the host state or state of work) (Article 10(1)(e)(ii)&(iii)), where:
 - a. both parents are in personal scope of Article 10(1)(a)-(d);
 - b. where one parent is in personal scope of Article 10(1)(a)-(d) and the other is a national of the host state; or
 - c. where one parent is in personal scope of Article 10(1)(a)-(d) and has sole or joint rights of custody.
 - v. Extended family members of the household³⁰ of those covered by Article 10(1)(a)-(d), whose residence has been facilitated or applied for before the end of the transition period (Article 10(3)).
 - vi. A durable partner of a person in personal scope of Article 10(1)(a)-(d), who is not a spouse or civil partner, is in scope of Article 10:
 - a. If their residence in the host state has been facilitated or applied for before the end of the transition period (Article 10(3)); or,
 - b. If they resided outside of the host state before the end of the transition period, but the relationship was durable at the end of the transition period and continues at the point they seek residence (Article 10(4)).
17. When considering family members under Article 10 it is important to note that they must be exercising a right to reside in the host state in accordance with EU law at the point they are brought in scope³¹. This means that a UK national family member cannot be in scope of this provision through their EU citizen family member in the UK and the same for an EU citizen family member through a UK national family member in an EU member state.
18. For example, a UK national living in the UK with their French national spouse at the end of the transition period would not be brought into scope of Article 10 as the spouse of an EU citizen as they cannot exercise their free movement rights to reside in the state of their nationality.
19. When assessing whether a dual national is in scope of Article 10(1)(a)-(d), it is important to determine whether they have exercised their free movement rights in accordance with EU law;
- i. An EU/EU or EU/third country dual national should be treated as an EU citizen for purpose of Part Two and in scope if they were lawfully residing in the UK at the end of the transition period. The same applies to a

³⁰ Guidance on extended family members;
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790935/extended-family-members-v7.0.pdf

³¹ Family members will though have rights, under Article 10, of family reunion before they join their family member in the host state

UK/third country dual national residing in an EU member state at the end of the transition period who should be treated as a UK national for the purpose of Article 10.

- ii. A UK/EU dual national is covered by the Withdrawal Agreement **if they have exercised their free movement rights in accordance with EU law by the end of the transition period**. This can be in the host state of which they have acquired nationality³² (*Lounes*³³), or in a member state in which they do not hold nationality.

For example; A UK national who moved to live and work in France in 2000. In 2015 they acquired French citizenship. As they had exercised their free movement rights under the free movement directive when they moved to France, which was before the end of the transition period, they would be in scope of Article 10 of the Withdrawal Agreement.

- iii. A UK/EU dual national who has not exercised their free movement rights (*McCarthy*³⁴) before the end of the transition period would not be covered by Article 10.

Examples of those in scope of Title II through Article 10

20. A Bulgarian national who is working and legally resident (exercising a right to reside) in the UK at the end of the transition period would be in scope of Article 10. It is not relevant how long the Bulgarian national has been legally resident in the UK when determining if they are in scope of Article 10.
21. A UK national who is self-employed in Poland and legally resident (exercising a right to reside) there at the end of the transition period would be in scope of Article 10.
22. A Lithuanian national who starts work in the UK on 20th December 2020, and is legally residing (exercising a right to reside) in the UK at the end of the transition period would be in scope of Article 10.
23. A child of a Spanish national, who was legally residing in the UK at the end of the transition period, who is born in 2023 while the Spanish national continues to lawfully reside in the UK would be in scope of Article 10.
24. A German civil partner residing in Germany at the end of the transition period, of a Greek national residing in the UK at the end of the transition period. The German civil partner moves to join their Greek national partner in the UK in 2021 while the Greek national is still lawfully resident in the UK. The German

³² This includes those who acquire the nationality of the host state before or after the end of the transition period, as long as they had exercised their free movement rights in the host state before the end of the transition period.

³³ *Lounes* (C-165/16)

http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130da4dda703306aa4858a868d0781ec3c9b0_e34KaxilC3eQc40LaxqMbN4Pb3eTe0?text=&docid=196641&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106645

³⁴ *McCarthy* (C-434/09) <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-434/09>

civil partner would be in scope of Article 10 at the point they join the partner in the UK.

25. A UK national who is living in the UK, with their husband and two children, and commuting to Belgium during the week for work, at the end of the transition period. They would be covered under Article 10(d) as a frontier worker, while they continued to work in Belgium.
26. Dual National
 - i. A UK national who moved to France as a worker before the end of the transition period and has since acquired French nationality would be covered under Article 10 of the Withdrawal Agreement. They would be in scope if they acquired their French nationality before or after the end of the transition period.
 - ii. A UK/Spanish dual national who was born in Spain, with Spanish and UK citizenship from birth, and only resided in Spain before the end of the transition period would not be in scope of Article 10.
 - iii. A UK/German dual national (held both nationalities from birth), who was born in the UK and moved to Sweden as a self-employed worker before the end of the transition period would be covered by Article 10.

Article 11 – Continuity of residence

27. The purpose of this provision is to ensure that ‘exercising a right to reside’ at the end of the transition period allows for temporary absences before and after the end of the transition period in line with provisions for continuous residence. This includes a person who would be considered as covered by Article 10 but is temporarily absent from the host state at the end of the transition period, if their absence has not broken continuity.
28. For those without a right of permanent residence, absences of no more than six months in any 12-month period do not affect continuity of residence and a person may have a single absence of no more than 12 months for an important reason without interrupting continuity of residence. Important reasons include pregnancy, childbirth, serious illness or study, as listed in Article 11 of the EU Free Movement Directive.
29. Once an EU citizen or UK national has acquired a right of permanent residence under EU law in the host State, after the transitional period Article 15 of the Withdrawal Agreement permits that they can be absent from the host State for up to five years continuously without their permanent residence rights lapsing.

Title II – Rights and obligations

Summary

30. Title II covers the rights and obligations in relation to those covered by Article 10 of the Withdrawal Agreement whilst in the host state. The relevant provisions in Title II for the purpose of this guidance are those covering residence rights and the rights of workers and the self-employed.

Chapter 1 – Rights related to residence, residence documents

Article 13 – Residence rights

31. This provision provides UK nationals, EU citizens and their family members (EU, UK and TCN) in scope of Article 10 with rights of residence, after the end of the transition period, subject to the same limitations and conditions provided in relevant provisions of EU law before the end of the transition period. This includes, for example, the right of residence for an initial 3 months, a right to reside for longer than 3 months if certain conditions are satisfied (e.g. being a worker, self-employed, self-sufficient or a student) and the right of permanent residence after 5 years' continuous lawful residence.
32. It also provides for family members to retain residence rights in certain circumstances in line with the Free Movement Directive, for example, when an EU citizen or UK national who sponsored the family member's residence has died, or a marriage or civil partnership legally ends.
33. The host state may not impose any limitations or conditions in respect of those rights over those provided for in the Withdrawal Agreement.

Article 15 – Right of permanent residence

34. UK nationals and EU citizens, and their family members, in scope of Article 10 who have continuously resided in the host state, in accordance with EU law, for five years have the right to reside permanently in the host state. Periods of residence before and after the end of the transition period are included to calculate the 5-year period.
35. The right to reside permanently under the Withdrawal Agreement can be lost after 5 years' consecutive absence from the host state. This is a longer period than provided for under the Free Movement Directive (2 years) and reflects the fact that once lost, the right to reside under the Withdrawal Agreement can't be restored.
36. For example; a French national who after residing in the UK under EU law for 7 years before the end of transition period, and acquiring the right of permanent residence, returns to France in February 2020. She will cease to be in scope of Article 10 following 5 years' residence outside of the UK.
37. There are exemptions to the 5-year requirement provided for in the Free Movement Directive to acquire permanent residency which are maintained in the Withdrawal Agreement, for example, for persons who are no longer working

in the host state but who have reached pension age, or persons who have a permanent incapacity to work, where the 5-year period is reduced.

38. Article 15(2) provides that persons who do not yet have a permanent right to reside in the host state can lose their right of residence under Title II of Part Two of the Withdrawal Agreement, and therefore fall outside of scope of Article 10, if they are absent from the host state for more than 6 months in any 12 month period (see Article 11). A person can also have a single absence of up to 12 consecutive months without breaking continuity of residence if it was for an important reason, such as:
- pregnancy and childbirth;
 - serious illness;
 - study or vocational training;
 - a work posting to a Member State or a third country.
- Absences for compulsory military service do not break continuity of residence.

Article 16 – Accumulation of periods

39. UK nationals and EU citizens, and their family members, in scope of Article 10, who have continuously resided in the host state, in accordance with EU law, for a period of less than five years at the end of the transition period, have the right to reside in the host state until they meet the threshold for permanent residency. The rules on absence will continue to apply during any accumulation of periods.
40. For example, a French national, who had lawfully resided in the UK between June 2018 and November 2020, and is lawfully residing and working in France at the end of the transition period. In February 2021 they are offered a job in the UK. As the 6 month absence period had not elapsed they would be able to return to the UK and continue accumulating periods to meet the five years required to acquire the right to reside permanently in the UK.

Article 17 – Status and changes

41. A person in scope of Article 10 can change the status under which they are lawfully residing under EU law. For example; a German national lawfully residing in the UK at the end of the transition period as a worker would continue to be in scope, and maintain their rights under Part Two of the Withdrawal Agreement, if they become self-employed or a student in the UK, in accordance with the terms of EU law.
42. Family members who derive their right to reside as a family member of a UK national or EU citizen at the end of the transition period can change their status but cannot become primary right holders as referred to in Article 10(1)(a)-(d). This means that they have no right to be joined by their own family members under the Withdrawal Agreement. A dependent family member though who ceases to be dependent after the end of the transition period (change of status) will continue to be in scope, and maintain their rights under Part Two of the Withdrawal Agreement, for example, a child would continue to be in scope of

Article 10 once they cease to be dependent on their parent, as long as they maintain a right of residence in the host state.

Article 23 – Equal treatment

43. This provision provides those with residence rights in the host state equal treatment with nationals of the host State. Those residing as family members, of those in scope of Article 10, shall also enjoy equal treatment with nationals of the host state where they have permanent residence. For example, they are entitled to receive healthcare in the host state charged at the same rates as for domestic nationals.
44. Paragraph 2 of Article 23 provides for the same exceptions to equal treatment as provided for in the Free Movement Directive. For example, host states are not obliged to provide social assistance during the first three months of residence, or to grant maintenance aid for studies to students or self-sufficient persons who do not have permanent residence.

Chapter 2 – Rights of workers and self-employed

Article 24 - Rights of workers

45. Workers in the host state and frontier workers in the state of work shall enjoy the rights guaranteed under Article 45 TFEU (free movement of workers) and the rights provided by Regulation 492/2011, including, but not limited to, the right to social and tax advantages, and assistance afforded by the employment offices of the host state or the state of work. They will also be entitled to reciprocal healthcare rights. The provisions list some of the rights at (a) to (h) but it is not an exhaustive list.

Paragraph 2 of Article 24 reflects the case law (*Ibrahim*³⁵ and *Teixeira*³⁶) which provides that (i) the child of a former worker who is lawfully resident in the host State has the right to reside until they have completed their education there and (ii) their primary carer has the right to stay until the child has reached the age of majority or no longer needs the primary carer to continue their education.

Article 25 - Rights of self-employed persons

46. Self-employed persons (including self-employed frontier workers) shall enjoy the rights guaranteed by Articles 49 and 55 TFEU, including the right to social and tax advantages, and assistance afforded by the employment offices of the host state or the state of work. They will also be entitled to reciprocal healthcare rights. Paragraph 2 applies Article 24(2) to the children of former self-employed people and their primary carers.

Title III – Coordination of social security systems

³⁵ Ibrahim (C-310/08) <http://www.bailii.org/eu/cases/EUECJ/2010/C31008.html>

³⁶ Teixeira (C-480/08) <http://www.bailii.org/eu/cases/EUECJ/2010/C48008.html>

Summary

47. Title III of the Withdrawal Agreement maintains the social security coordination provision coverage of those who have exercised their EU free movement rights before the end of the transition period. The scope of those covered by Title III is wider than the scope of Titles I and II.

Definitions

48. As stated in Article 31(2), for the purposes of Title III, the definitions set out in EC Regulation 883/2004³⁷ (part of the EU Coordination Regulations) apply, and so differ from those listed under Article 9, which apply to the rest of Part Two of the Withdrawal Agreement.
49. Residence under Title III is as understood in the context of the EC Regulation 883/2004 (part of the EU Coordination Regulations), and refers to habitual residence³⁸, not residence under the EU Free Movement Directive. For example, an economically inactive UK national residing in Spain at the end of the transition period, who is not a job seeker and does not have comprehensive sickness insurance may not be considered to be lawfully residing under EU law, and so would not be considered as in scope of Titles I and II of the Withdrawal Agreement. They would, however, be considered in scope of Title III, as they are habitually resident in Spain.
50. This difference is also important when considering onward movement of UK nationals in the EU after the end of the transition period. A UK national lawfully residing in Austria, as a self-employed worker, at the end of the transition period would be in scope of Titles I, II and III of this Part. If they then moved to Poland for a period long enough to lose their right of residence in Austria, for example 5 years for permanent residence, they would then cease to be in scope of Titles I and II, but they would remain in scope of Title III whilst they continued to be in one of the situations listed by Article 30, for example, living and working in Poland subject to Polish social security legislation. This would mean that while they had no right of residence in Poland under the Withdrawal Agreement, they would continue to be in full scope of the social security coordination provisions.
51. “Subject to the legislation” in this part should also be understood in reference to the EU Coordination Regulations and should be determined under the conflict of law rules on applicable legislation in these regulations.
52. The definition of “family members” in this section should be read as it relates to the EU Coordination Regulations rather than the EU Free Movement Directive. It should be noted that under the EU Coordination Regulations the definition of a

³⁷ <https://www.legislation.gov.uk/eur/2004/883>

³⁸ See DWP decision maker guidance, habitual residence, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/911538/dmqch703.pdf

child for Title III is therefore a person under 18 years of age, as opposed to under 21 for Titles I and II, or dependent. The exception to this is where the competent state has a different definition, in which case the definition of family member as set out in the domestic social security legislation of the competent state should be used.

53. “Without interruption” in this Title should be read as while a citizen remains in any of the situations listed under Article 30. They can move between the categories in Article 30(1) but they must remain either subject to the legislation of or resident in the opposing state (UK for EU citizens and EU for UK nationals).

Linking of the Titles

54. Title III of the Withdrawal Agreement includes provisions at Article 30(3) and (4) that where an individual does not or no longer falls within Article 30(1), all persons listed under Article 10, including those covered as family members, will also be in scope of Article 30 providing they are exercising rights under Article 13 (a right to reside in the host state), 24 or 25 (a right as an employed or self-employed worker subject to the legislation of the host state). They would therefore be covered by the EU Coordination Regulations even though they aren't in one of the situations listed under Article 30(1).
55. For example, a Swedish national who is a student in the UK at the end of the transition period and has comprehensive sickness insurance. Based on their individual circumstance, they are considered to be habitually resident in Sweden, and so would only be deemed temporarily resident in the UK. This would mean that they would not be deemed resident under Title III, and so not in scope of Article 30(1). They could though be deemed resident under EU law for Article 10, as students have a right of residence in the state of study. Due to the linking of the Titles, they would be in scope of Title III while they maintained this right of residence under Titles I and II. They would also continue to be in scope of Title III, while they maintained this right of residence in the UK, if they moved back to the EU.
56. Family members are also covered differently under the different Titles. Family members who are in scope under Article 10 have full Title I and II rights once they join the primary right holder in the host state³⁹. These rights generally require an ongoing relationship until they acquire a right to permanent residence under Article 15; however they are able to maintain these rights in certain circumstances before then if the link breaks after they have joined the primary right holder, e.g. child ceasing to be dependent.
57. Due to the linking of the Titles this group would have full Title III rights once they joined the primary right holder. Family members of those in scope under Article

³⁹ Family members will though have rights, under Article 10, of family reunion before they join their family member in the host state.

30(1) do not have full Title III rights but instead have derived rights in their capacity as a family member, and these are lost if they cease to be in scope as a family member. They are not, though, required to have joined the primary right holder in the host state to benefit from this provision.

58. For example, a French national moves to work in the UK in 2019, where they pay contributions, and is working and habitually resident in the UK at the end of the transition period. They are in scope of Titles II & III of Part Two of the Withdrawal Agreement. Their family remains resident in France and resides there at the end of the transition period. As they have not joined the primary right holder in the UK they are not in full scope of the Withdrawal Agreement but do have derived rights as family members under Article 30 for certain social security coordination provisions. These rights would cease if the family link under the Withdrawal Agreement was broken, for example following divorce. If they subsequently moved to the UK to join the primary right holder in 2022, they would then be brought in scope of Titles I and II and would have full rights under Title III. They would maintain these rights even if the family link was broken.
59. It is important to note that this linking of the Titles does not operate in the other direction, and so those in scope of Title III are not entitled to any independent right of residence in the host state.

Article 30 – Persons covered

60. Article 30 lists the categories of persons that are in scope of Title III. These groups will continue to be in full scope of the social security coordination provisions whilst they remain in scope of this Article. Their family members and survivors will have rights derived from the primary right holder. This includes those listed under Article 30(1) and those in scope of Article 10. As stated above this scope is wider than the scope for the other Titles of this Part. The following are in scope of Article 30(1):
- i. EU citizens who are subject to the legislation of the UK at the end of the transition period (Article 30(1)(a)), and UK nationals who are subject to the legislation of an EU member state at the end of the transition period (Article 30(1)(b)).
 - ii. EU citizens who reside in the UK and are subject to an EU Member State's legislation at the end of the transition period (Article 30(1)(c)), and UK nationals who reside in an EU member state and are subject to UK legislation at the end of the transition period (Article 30(1)(d)).
 - iii. EU citizens who are employed or self-employed in the UK, and are subject to the legislation of an EU member state, at the end of the transition period (Article 30(1)(e)(i)). UK nationals who are employed or self-employed in the EU, and are subject to the legislation of the UK, at the end of the transition

- period (Article 30(1)(e)(ii)). This includes posted workers who are on a posting at the end of the transition period in either the UK or EU⁴⁰.
- iv. Stateless persons and refugees lawfully residing in the UK or a MS who are in one of the situations described above.
 - v. Third country nationals with relevant links to the UK and an EU member state who are in one of the situations above (Article 30(1)(g)). For example, a Japanese national residing in the UK under EU law, who works in France and is subject to the legislation of France. Third country nationals whose cross-border situation is between two EU member states, and does not involve the UK, would not be covered by this Title.
 - vi. The family members and survivors of the above groups to the extent that they derive rights or obligations as a family member under the EU Coordination Regulations.
61. Those in a situation listed under Article 30(1) will continue to be covered by this title while they remain, without interruption, in any of the situations set out at paragraph 30(1) involving both the UK and an EU member state at the same time (Article 30(2)). Persons can move between the groups listed at paragraph 30(1) without this being treated as an interruption. When assessing whether both a Member State and the UK are involved at the same time it is appropriate to look to the nationality of the person involved to fulfil one aspect of this requirement.
 62. For UK nationals, as noted above, as this must involve **an** EU member state the onward movement to a second member state is not classified as an interruption as long as they continue to be in a situation involving a member state. This means that if a UK national, who was living in an EU member state at the end of the transition period, is permitted to move to a second EU member state after the end of the transition period, then they will continue to be covered by the Article 30(1) provisions.
 63. Articles 30(3) and (4) specify that those who fall within Article 10, will also be in scope of Article 30 and, therefore, will continue to be in full scope of the social security coordination provisions whilst they retain a right of residence under Title II in the relevant host state. As Titles I and II are dependent on the beneficiary having a right to reside rather than being resident, the beneficiary can be absent from the host state and still benefit from this title as long as they do not exceed the absence rules for their residence.
 64. Article 30(5) limits the cover for family members/survivors to rights derived from the main right holder. This group will be able to benefit from the Title III provisions in their capacity as a family member of the primary right holder but will not have full Title III rights independently. Under Article 30(5) family members are not themselves required to be in cross border situation to be in

⁴⁰ It will be for the individual states to determine if a posting can continue after the end of the transition period. Where the posting is allowed to continue the individual will be in scope of Article 30.

scope of this provision. Unlike under Article 10 the family member link does not need to be established by the end of the transition period under Article 30(5). This means that future spouses are covered by this provision. Future children, both born to and adopted by the primary right holder after the end of the transition period, are covered as family members under both Articles.

65. As under Title II, whether or not UK/EU dual nationals are in scope of Article 30 will depend on whether they have exercised their free movement rights under EU law before the end of the transition period. EU/EU or EU/third country nationals should be considered as EU citizens, and UK/third country nationals as UK nationals, for the purpose of Title III.
- *Lounes*⁴¹ dual nationals, those who exercised their free movement rights before acquiring their second EU nationality are in scope of Article 30.
 - *McCarthy*⁴² dual nationals, those who have not exercised their free movement rights before the end of the transition period, for example those who claimed their second nationality through their parents. This group are not in scope of Article 30 and are treated as UK nationals while in the UK and EU citizens while in the EU.

Article 31 – Social security coordination rules

66. The provisions in Article 48 TFEU and the EU Coordination Regulations will continue to apply to those in scope of Title III. These Regulations cover:
- Aggregation of periods to meet minimum requirements;
 - Determining the state of applicable legislation for paying national insurance contributions;
 - The state competent to pay benefits, where a citizen has interacted with the systems of more than one state;
 - Reciprocal healthcare entitlements; and
 - The export of certain groups of benefits within the UK and EU.
67. The UK and EU will also continue to take due account of the Decisions and Recommendations issued by the Administrative Commission on the interpretation and application of the EU Coordination Regulations. These Decisions and Recommendations are not legally binding, but there is a duty to consciously consider applying the requirements.
68. As noted above, Article 31(2) specifies that the definitions in Title III should be understood by reference to Article 1 of Regulation (EC) No 883/2004 and as a consequence they may differ from the definitions in the rest of this Part Two of the Withdrawal Agreement.

⁴¹ Lounes (C-165/16)

http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130da4dda703306aa4858a868d0781ec3c9b0_e34Kaxilc3eQc40LaxqMbN4Pb3eTe0?text=&docid=196641&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106645

⁴² McCarthy (C-434/09) <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-434/09>

69. For persons in scope, the UK and EU Member States continue to have obligations under the EU Coordination Regulations which also consider which state is competent for a person's healthcare costs. For example:
- A person residing in a Member State for whose healthcare costs the UK is competent (UK-issued S1) will be able to access needs-arising and/or planned treatment on equal terms as domestic nationals in the Member State of residence, with the cost reimbursed by the UK, as they can currently.
 - A UK national who is residing in a Member State and whose healthcare costs are the responsibility of that or another Member State will be able to access needs-arising or planned treatment in the UK with the cost reimbursed by their competent state (presenting an EHIC or S2 document).

Examples of those in full scope of Title III

Examples: UK nationals Article 30(1)(b), (d) and (e)(ii)

70. A UK national who, after working all their life in the UK, has taken early retirement in Latvia in 2020, and is economically inactive and habitually resident there. They will therefore be subject to the legislation of Latvia, based on the EU Coordination Regulations (EC Regulation 883/2004(11)(3)(e)), at the end of the transition period and so will be in scope under Article 30(1)(b). When they start claiming their State Pension from the UK in 2021 this will be paid at the same rate as in the UK (will be uprated) and they will receive Winter Fuel Payment from the UK, provided they make a claim and meet the eligibility criteria, and the UK will be competent for their healthcare. They will be entitled to access the Latvian healthcare system on equal terms as domestic nationals and will be entitled to a UK-issued EHIC to access needs-arising healthcare and S2 to access planned healthcare, in EU member states excluding Latvia.
71. A UK national who habitually resides with their family in the UK, and commutes to work in France during the week, where they are employed by a French company. They would be subject to the legislation of France and pay French social security contributions, based on the EU Coordination Regulations (EC Regulation 883/2004 (11)(3)(a)), and so would be in scope of Article 30(1)(b).
72. A UK national habitually resident with their family in Belgium at the end of the transition period, who works in the UK during the week, returning to Belgium every weekend, and pays UK National Insurance contributions (subject to UK legislation). They are in scope of Article 30(1)(d).
73. A UK national who works for a UK employer and is posted to work temporarily for six months in Sweden and is working there at the end of the transition period. He is not resident in Sweden in accordance with EU law. Posted workers who are not legally resident in the country they are working in, are not in scope of Article 10. They would though be in scope of Article 30(1), provided they are allowed to continue their posting after the end of the transition period, and so have social security rights under these provisions.

74. A UK national is habitually resident in Spain at the end of the transition period. In 2022 they decide to move to Italy as they are offered a job there. If Italy allows them to move to live there, then they will continue to be in scope of Article 30(1)(b)

Examples: EU citizens Article 30(1)(a), (c) and (e)(i)

75. A Greek national who moves with their family to live and work in the UK at any point before the end of the transition period. They will be subject to the legislation of the UK, based on the EU Coordination Regulations (EC Regulation 883/2004 (11)(3)(a)), and so are in scope of Article 30(1)(a).
76. A Bulgarian national who, at the end of the transition period, habitually resides in the UK with their family at the weekend, and commutes to work in Luxembourg during the week and pays their contributions there. They would be subject to the legislation of Luxembourg, based on the EU Coordination Regulations (EC Regulation 883/2004 (11)(3)(a)), and would be in scope of Article 30(1)(c).
77. A German national who is posted to work temporarily in the UK by their German employer for 12 months, starting in September 2020. They are in the UK on their posting at the end of the transition period. They are subject to the legislation of Germany while they are on their posting and are in scope of Article 30(1)(e)(i).

Examples: Dual Nationals

78. A dual British-Irish citizen who was born in Wales to British parents, and acquired Irish nationality through their Irish Grandmother who was born in Ireland. They continue to live and work in Wales until the end of the transition period (*McCarthy*⁴³) and will be treated like a British national who has only resided in the UK before the end of the transition period. They would not be in scope of the Withdrawal Agreement.
79. A dual British-French citizen who was born and has continued to live and work in the France until the end of the transition period (*McCarthy*⁴⁴) will be treated like a French national who has only resided in France before the end of the transition period. They would not be in scope of the Withdrawal Agreement.
80. A French person who moved to work in the UK before the end of the transition period, and was later granted British citizenship (*Lounes*⁴⁵) will be in full scope of Articles 10 and 30, while they are in the UK and if they move to the EU, as they will retain a right of residence in the UK. While they are resident in the UK

⁴³ McCarthy (C-434/09) <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-434/09>

⁴⁴ McCarthy (C-434/09) <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-434/09>

⁴⁵ Lounes (C-165/16) <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130da4dda703306aa4858a868d0781ec3c9b0.e34KaxiLc3eQc40LaxgMbN4Pb3eTe0?text=&docid=196641&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106645>

they will normally be treated as an EU citizen for purposes of the Withdrawal Agreement, and as a UK national while they are resident in the EU.

Examples: Stateless persons and refugees Article 30(1)(f) and third country nationals Article 30(1)(g)

81. A Kenyan national who resides with their family in the UK at the end of the transition period. They travel to work in Belgium 3 days a week where they are employed by a Belgian company. They would be subject to the legislation of Belgium and pay Belgian social security contributions, based on the EU Coordination Regulations, and so would be in scope of Article 30(1)(g).
82. An Indian national who was habitually resident in France with their family at the end of the transition period, travelling to work in the UK during the week for a UK company, and returning to France at weekends, would be in scope of Article 30(1)(d) and (1)(g).
83. A Japanese national who is habitually resident in the UK and is not in a situation involving an EU member state at the end of the transition period would not be in scope of Article 30(1) because they are not in one of the situations described in Article 30(1)(a) to (e).

Examples: Dependants

84. A Portuguese citizen resides and works in the UK and is subject to UK legislation at the end of the transition period. She is in scope of Article 10 and covered under Article 30(1)(a) of the Withdrawal Agreement. Her spouse, who is unemployed, and their two minor children live in Portugal. If they remain in Portugal, then they will have derived rights under Article 30(5) as family members, they will continue to have S1 entitlements to healthcare in Portugal reimbursed by the UK as the competent state and will continue to receive child benefit from the UK (the current competency rules apply so if the partner starts work in Portugal, Portugal would become competent for their healthcare and also have primary competence for child benefit).
85. If, however, the family move to join the primary right holder in the UK after the end of the transition period, while the children are still dependent, then the partner and the children would be brought into scope of Article 10 as family members and have full SSC rights under Article 30.

Article 32 – Special situations covered

86. Article 32 covers individuals who have had periods of residence or contributions covered by the EU Coordination Regulations but who are no longer in a cross-border situation and are therefore not in full scope of the Withdrawal Agreement, to ensure no cliff-edge loss of social security coordination coverage. The rights in Article 32 apply only to the extent set out in the relevant

paragraphs to individuals who are not, or are no longer, covered by Article 30. These groups will be in partial scope of the Withdrawal Agreement and will still benefit from elements of the EU Coordination Regulations in certain circumstances but do not have full rights under those regulations.

Article 32(1)(a) and (2) – Past periods

87. Article 32(1)(a) protects the rights of those that have periods of insurance, employment, self-employment, or residence in another state before the end of the transition period but who are not in scope of Article 30 at the end of the transition period or who are no longer in scope. Periods completed before and after the end of the transition period will be taken into account. This means that a UK national who has made social security contributions in an EU Member State before the end of the transition period will be able to aggregate them with contributions they make **after the end of the transition period** for the purpose of meeting minimum entitlement periods for a state pension or relevant benefit and deriving relevant rights from these periods, including family benefits e.g. survivors' benefits.
88. The same would apply for an EU citizen who has made contributions in the UK before the end of the transition period, who could aggregate these with future contributions made in the UK, or a third country national with contributions in both the UK and EU before the end of the transition period.
89. Anything that an individual would have received as a result (even indirectly) of contributions made before the end of the transition period, when the regulations fully applied, would apply under Article 32.
90. Those in scope are entitled to receive benefits deriving from these past periods without any reduction. This means that an individual, who is in scope of Article 32(1)(a), will have their UK State Pension paid in the EU at the same rate as in the UK (uprating).
91. Those in scope of Article 32(1)(a) are also entitled to sickness benefits (this includes sickness benefits in kind, healthcare), where this right is derived from these past periods, subject to the current rules on competence.
92. Those in scope are: UK nationals with periods in the EU, EU citizens with periods in the UK and stateless persons, refugees, and third country nationals who fulfil the conditions of Regulation (EC) No 859/2003 with periods in the UK and EU before the end of the transition period. The family members of the above will also be entitled to rights derived from these periods, for example survivors pension. The healthcare entitlements for family members and dependants will be determined by each Member State's legal definition of dependents.

93. For example: a UK national working in the UK at the end of the transition period but had previously worked in France for 4 years (2004-2008) who then moves to Finland in 2025 to retire under the future system. When they claim their state pension in Finland, France will be able to aggregate the years worked in the UK to meet the minimum period in France to pay a French state pension. The UK will pay their UK State Pension at the same rate that they pay in the UK (it will be uprated), they will be entitled to winter fuel payment from the UK, provided they make a claim and have a genuine and sufficient link with the UK, and the UK will be competent for their health cover, including for treatment in the state of residence on equal terms as domestic nationals under the S1 scheme, and while abroad using a UK EHIC and access to planned healthcare abroad in Member States under the S2 scheme. The same healthcare entitlements will apply to their spouse. Despite also working in France and receiving a French state pension in addition to their UK state pension, because they worked in the UK longer and have not retired to France, the UK is competent for their healthcare.
94. For example: a Maltese national living in Malta at the end of the transition period, who had previously worked in the UK for 15 years, 1990 – 2005, moves to the UK in 2023 to retire when they reach the state pension age in Malta. They start receiving their Maltese state pension and Malta is competent for their healthcare. 2 years later they reach the state pension age in the UK and start to receive their UK state pension, at which point the UK becomes competent for their healthcare. If they subsequently moved back to Malta competency would switch back to Malta. They will be entitled to a S1 (if not living in the state competent for their healthcare), EHIC and S2 planned healthcare from the country which is deemed to be competent. This is because they are residing in one of the States paying their state pension.
95. For example: a Peruvian national had worked in Germany 1990 – 1997, the UK 1997 – 2010 and Spain 2010 -2017. At the end of the transition period they are working in America. In 2024 they return to Germany and work for a further 4 years before retiring in Germany. They can use the periods worked in the UK and the EU before and after the end of the transition period to aggregate towards the minimum periods in each of the countries and their UK state pension will be paid in line with that paid in the UK (uprated). As they retired in Germany and have made contributions in Germany, Germany will be the competent state for their healthcare. If they subsequently moved to Spain competency for their healthcare would transfer to Spain.

Article 32(1)(b) – Planned treatment

96. Article 32(1)(b) protects the rights of people (UK nationals, EU citizens, stateless persons, refugees and third country nationals) visiting the UK or the EU for planned medical treatment in a public healthcare provider under the S2 scheme where authorisation was requested, but not necessarily granted, before the end of the transition period, so they are able to commence or complete their

treatment. This also includes the rights of their accompanying person to enter the state of treatment.

97. A person who before the end of the transition period has applied for authorisation to obtain planned treatment in the UK or a Member State has the right to complete the course of treatment in accordance with the EU Coordination Regulations. This does not cover further treatment, with the exception of supplementary treatment required in accordance the EU Coordination Regulations. They and their “accompanying person” (for example a family member or a carer) have the right to enter and exit the State of treatment in order to complete the course of treatment.
98. For example, a UK national who is not in scope of Article 30 and lives in the UK at the end of the transition period, applied in December 2020 for planned treatment in Germany. Their application meets the criteria and they receive authorisation for their treatment to commence in Germany in February 2021. According to their treatment plan they are given a six month S2 certificate initially based on the clinical assessment which requires several cycles of treatment. They are allowed to travel to Germany along with their spouse. They can enter and exit Germany as many times needed until the completion of the treatment. If at the end of the six month period which was initially granted, the clinicians advise to extend their treatment, this can be approved as it is considered to be an extension of the same course of treatment.
99. The equivalent example would also apply for an EU citizen who is in the middle of treatment in the UK and can enter the UK after the end of the transition period as necessary to complete their treatment.

Article 32(1)(c) – Unplanned treatment

100. Article 32(1)(c) provides for those UK nationals who are on a temporary stay in an EU member state, or EU citizens who are temporarily in the UK, at the end of the transition period, to continue to rely on the EU Coordination Regulations for unplanned needs arising treatment, via the EHIC scheme. This covers those on holiday or undertaking a period of study (who are not covered by Article 10 or 30) while that stay continues in that state.
101. For those on holiday at the end of the transition period this covers them in the state they are in, but ceases at the point they continue their trip to another state or return home. For example; a UK national who habitually resides in the UK, is on holiday in Austria at the end of the transition period. If they have an accident while in Austria after the end of the transition period, then they will be able to rely on this provision to use their UK-issued EHIC in Austria, as long as their trip commenced before the end of the transition period.
If they then travel on to Italy they will not be covered by the Withdrawal Agreement and so will not be able to use their EHIC rights in Italy. This would also be the case if they subsequently returned to Austria, either from Italy or on

a subsequent trip, where they would no longer be able to use their UK-issued EHIC.

102. For example, an EU citizen who habitually resides in an EU Member State, is on holiday in the UK at the end of the transition period. If they have an accident while in the UK after the end of the transition period then they will be covered by this provision and so able to use their Member State issued EHIC to access the NHS on the same terms as UK nationals who are ordinarily resident in the UK, as long as their trip commenced before the end of the transition period.
103. For those undertaking a period of study at the end of the transition period, who are not covered by Article 30, they will continue to be able to use their EHIC in the state of study for the duration of their studies. They will not cease to be in scope following a temporary absence from the state of stay. For example; a Belgian national starts a 4 year course of study in the UK in 2018. They maintain their habitual residence in Belgium where their parents live and on whom they are financially dependent, and they regularly return to Belgium. They can continue to use their Belgium issued EHIC in the UK for the length of their study in the UK to access the NHS even if they have temporary absences from the UK.
104. For example, a UK national starts an 18 month postgraduate course in the Netherlands in September 2020. They have a UK-issued EHIC which they use to access needs arising treatment in the Netherlands on the same terms as Dutch nationals. They can continue to use their UK-issued EHIC in the Netherlands even if they have a temporary absence from the Netherlands.

Article 32(1)(d) – Export of family benefits

105. This provision seeks to address a gap in the provision of Article 30 for families where the entitlement for a benefit is derived from a person who is not in scope of Article 30. This is primarily where part of the family resides in an EU member state and part of the family resides in the UK.
106. This covers: UK nationals residing in the UK whose family resides in an EU member state; EU citizens residing in an EU member state whose family resides in the UK; and stateless persons, refugees and third country nationals residing in the UK or EU in accordance with EC Regulation 859/2003, whose family members reside in the opposing state, at the end of the transition period. These groups are entitled to family benefits under the EU Coordination Regulations where the entitlement is established by the end of the transition period. Therefore, the benefit does not need to be in payment at the end of the transition period but the entitlement must exist, so this provision does not cover children born to or adopted by the person after the end of the transition period, or future partners.

107. For example: a UK national who works and habitually resides in the UK at the end of the transition period, while their spouse, who is economically inactive, resides in Finland with their child. The UK has primary competence for the child benefit for the children living in Finland as long as the UK entitlement provisions are met. Finland has secondary competence and will pay a differential supplement if needed. In 2023 the spouse starts working in Finland and so primary competence for the benefit for the child transfers to Finland, with a differential supplement payable by the UK if needed. In 2025 the couple have a second child who will live with their sibling in Finland, and the spouse stops working. The primary competence for the benefit for the child transfers back to the UK with Finland only paying the differential supplement. Only the first child is in scope of this provision though and so the UK will only pay child benefit for the first child. If the spouse and children decide to join the UK national residing in the UK, then they will no longer be considered as in scope of Article 32(1)(d) and if they subsequently return to Finland they will also not be in scope of the Withdrawal Agreement.

Article 32(1)(e) – Derived family member rights

108. Article 32(1)(e) protects the derived rights of those persons covered in Article 32(1)(d)(i) and (ii), above, for as long as they maintain their entitlement, for example, reciprocal healthcare cover and sickness benefits in kind. The family members do not need to be receiving a benefit under the above rules to be covered by Article 32(1)(e), but the entitlement must exist, e.g. a spouse would be covered even where the couple do not have children at the end of the transition period.

109. Where an EU citizen (or a third country national within scope of the provision) is residing in an EU member state, subject to the legislation of a member state, at the end of the transition period (e.g. a worker) and has a family member residing in the UK at that date who has a derived right under the EU regulations to reciprocal healthcare, the family member will continue to be able to benefit from that derived right for as long as the conditions set out in the EU regulations are met. The same applies in the vice versa situation for a UK national (or relevant TCN) residing in the UK and subject to UK legislation at the end of the transition period who has a family member in a MS.

110. This means that dependent family members of UK nationals residing in a Member State who would not otherwise be covered (for example if they are an EU citizen residing in a Member State), will continue to be entitled to a UK-issued S1 (as well as associated EHIC and S2 entitlements). They do not need to have registered the S1 before the end of the transition period, providing the entitlement existed at the end of the transition period.

111. They lose the entitlement if they no longer meet the relevant conditions in the EU Coordination Regulations. For example, when a dependent child becomes no longer dependent they may no longer meet the definition of family member in

the EU Coordination Regulations. Competency rules continue to apply as now, so if the spouse starts work then competency for their healthcare would transfer to the state of work, but they would maintain rights as a beneficiary of this article, so if they subsequently became unemployed competency would revert.

112. For example: a Croatian national works and habitually resides in Estonia at the end of the transition period and their UK national spouse works and habitually resides in the UK. They both have an independent right to sickness benefits in kind in the respective host state. In 2025 the UK national becomes unemployed in the UK at which point Estonia will become competent for the derived right for sickness benefits in kind.

Article 33 – Nationals of Iceland, Liechtenstein, Norway and Switzerland

113. Article 33 allows for the necessary provisions in Title III to apply to EFTA nationals who have lived or worked in the UK and EU Member States before the end of the transition period, ensuring that there are no gaps in their social security coordination cover (e.g. a Swiss citizen who has worked in the UK, Switzerland and Germany before the end of the transition period). Nationals of the EFTA state will be treated as if they were EU citizens for the purpose of social security coordination, as occurs under the EU Coordination Regulations currently by virtue of the EEA Agreement⁴⁶ and the Swiss Free Movement of Persons Agreement⁴⁷.
114. The EEA EFTA Separation Agreement⁴⁸ and Swiss Citizens' Rights Agreement⁴⁹ contain provisions which mirror Title III of the Withdrawal Agreement, including Article 33. The Joint Committee under the Withdrawal Agreement will set the date from which provisions of Title III will apply to nationals of EFTA States.
115. In this way, the three agreements will ensure, for example, that an individual who has worked in Norway, the UK and France before the end of the transition period will continue to be able to aggregate contributions made in all three states. Persons in scope will also be able to exercise their reciprocal healthcare entitlements across the EEA and Switzerland (e.g. a UK EHIC can be used across the territories). Those in scope will also only be subject to the legislation of one state at a time, as they are currently under the EU Coordination Regulations. For example, a UK national, normally resident in the UK, who is on a 12 month posting in Norway, by their UK employer, at the end of transition period would be covered by this title.

⁴⁶ <https://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>

⁴⁷ [https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22002A0430\(01\):EN:HTML](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22002A0430(01):EN:HTML)

⁴⁸ <https://www.gov.uk/government/publications/eea-efsa-separation-agreement-and-explainer>

⁴⁹ <https://www.gov.uk/government/publications/eea-efsa-separation-agreement-and-explainer>

116. The respective provisions on triangulation in the EEA EFTA Agreement and the UK-Switzerland Agreement apply to nationals of EU Member States, but not to third country nationals.
117. The EEA EFTA Separation Agreement provision on triangulation (Article 32) does not apply to Swiss nationals, and the Swiss Citizens' Rights Agreement provision on triangulation (Article 26b) does not apply to EEA EFTA nationals. This is because those countries' SSC agreements with the EU only apply between those countries and the EU, and so nationals of the other countries do not have rights under the EU SSC regulations in the other territory (except as a family member or survivor).⁵⁰
118. For example, a UK national who had worked most of their life in the UK (38 years), but had spent 8 years working in Switzerland before the end of the transition period, retires to France in 2025. When they claim their State Pension from the UK the UK authorities pay the UK state pension in France at the same rate as in the UK, under Article 32, and will inform the Swiss authorities who will be able to use periods worked in the UK to meet the minimum required period in Switzerland (aggregation). Since they have not made contributions in France and have worked the majority of their life in the UK, the UK will be the competent state for their healthcare costs and they will be entitled to UK-issued S1, EHIC and S2.
119. For example, a Brazilian national who has worked in the UK (1990 -1998), Portugal (1998 – 2010) and Iceland (2010 – 2017) before the end of the transition period and is residing in Brazil at the end of the transition period. They choose to retire to Switzerland in 2024. They will be able to use the years worked in either Portugal or Iceland to meet the minimum qualifying period in the UK (aggregation) and their UK state pension would be paid at the same rate as in the UK (uprated). As they have not worked in Switzerland, their country of residence, Portugal will be responsible for their healthcare costs as the country in which they paid the largest proportion of their contributions.

Article 34 – Administrative cooperation

120. To enable this Part of the Withdrawal Agreement to be implemented effectively, the UK will continue to participate in the Electronic Exchange of Social Security Information (EESSI) system for those cases covered by this Title. EESSI is an IT system that helps social security institutions across the EU to exchange information.
121. Portable documents such as the PDA1, S1, and S2 (with the exception of EHIC) will remain valid for those in scope of the Withdrawal Agreement either until their expiration or until replaced by new documents.

⁵⁰ For the triangulation provisions outlined to come into effect from the end of the transition period, a decision on the applicability of the relevant articles will be taken by the Withdrawal Agreement Joint Committee and EEA EFTA Separation Agreement Joint Committee.

122. The UK will issue new EHICs for those in scope of the Withdrawal Agreement for whom the UK is competent, including for students who are undertaking a period of studies in a Member State at the end of the transition period and are in partial scope of Article 32(1)(c). For those individuals who are on a trip in the EU at the end of the transition period (in partial scope under Article 32(1)(c)), for whom the UK is competent, the UK will issue Provisional Replacement Certificates (PRC) should they require treatment.

Article 35 – Reimbursement, recovery and offsetting

123. This provision clarifies that the EU reimbursement provisions, as set out in the EU Coordination Regulations, will continue to apply even where the person concerned is not, or no longer, covered by this Title, where the event either occurred before the end of the transition period, or while the person was covered by this Title.

124. This means that the relevant provisions in the EU Coordination Regulations will continue to apply for persons who are not in scope of Title III (for example a UK-insured person who received treatment in a Member State on a visit that took place before the end of the transition period), and persons who are no longer in scope of Title III, for whom reimbursement remains outstanding. Under EC Regulation 987/2009, reimbursement for treatment costs outside of the competent State is made in arrears.

125. For example, a French citizen, who is not in scope of Title III of the Withdrawal Agreement, goes on holiday in the UK before the end of the transition period and uses their EHIC when receiving needs-arising healthcare in the UK. This provision ensures, even if the reimbursement process happens after the transition period, the UK will be reimbursed by France as the treatment started before the end of the transition period.

Article 36 – Development of law and adaptations of Union acts

126. This provision ensures the continued functioning of the EU Coordination Regulations by requiring that the UK will continue to apply the regulations as updated by the EU after the end of the transition period, for those in scope of this Title. The Joint Committee will revise the Withdrawal Agreement to apply future amendments to (or replacements for) the EU Coordination Regulations to persons in scope of Title III to maintain parity of these regulations between the UK and the EU.

127. The exception is where these amendments concern the exportability of cash benefits (e.g. making a benefit exportable for an unlimited length of time that previously was limited or making a benefit exportable when it previously was not – and vice versa), or changing which benefits are in scope of the EU Coordination Regulations. In such cases the Joint Committee will assess the impact of the amendment and unless the Joint Committee makes a decision

within six months not to apply the amendment, the changes will be added to the Withdrawal Agreement and the UK will reflect such changes in domestic law.

128. The amendments to the EU Coordination Regulations will be incorporated into the relevant Annex of the Withdrawal Agreement.

Title IV – Other provisions

Article 38 – More favourable provisions

129. This provision recognises that states may have domestic laws, regulations or administrative provisions that would be more favourable to the persons covered by this Part, and so these are not affected by the Withdrawal Agreement. This is based on similar wording in Article 37 of the EU Free Movement Directive and is to allow parties to go over and above the Withdrawal Agreement so long as it is more favourable to the individual.

130. This provision does not apply to Title III rights, beyond the exceptions already provided for by the EU Coordination Regulations, on the basis that the EU Coordination Regulations provide for a fully coordinated system which must be applied consistently by individual states. However, Article 38 should not be read as purporting to interfere with the right of each state to decide its own domestic social security rules.

131. This article is without prejudice to the Common Travel Area agreements that exist between the UK and Ireland, and recognises that more favourable provisions may exist for those covered by these agreements.

Article 39 – Lifelong protection

132. Those covered by Part Two of the Withdrawal Agreement will continue to enjoy the rights provided for by this Part while they continue to meet the conditions of the relevant Title. Beneficiaries under Titles I and II will continue to be covered while they retain a right of residence in the host state. Beneficiaries of Title III will continue to be covered while they continue to be in one of the situations set out in Title III, and are not lost simply by a person no longer being covered by Titles I and II.

133. For example, a UK national who is lawfully residing in France at the end of the transition period, and so is in scope of Titles I, II and III, could remain in scope of Title III if they subsequently moved to Germany for a period that meant that they no longer had a right of residence in France, if they continued to meet the conditions of Title III. This would mean that while they no longer had a right to reside in France, and so were no longer in scope of Titles I and II they would continue to be covered by the EU Coordination Regulations while they resided in or be subject to the legislation of an EU member state.

Chapter 3 - EU Regulations on social security coordination

Summary

1. The intention of this chapter is to provide a summary of the EU Regulations on social security coordination (the “EU Coordination Regulations”) to assist with comprehension of the guidance on implementation of the Withdrawal Agreement. It should not be read as providing a full interpretation of the EU Coordination regulations. Benefit specific guidance should be referred to for full guidance on these regulations.
2. The EU Coordination Regulations are designed to facilitate the movement of individuals within the EU by providing a system of coordination so that individuals, and their families, are not disadvantaged due to exercising their EU free movement rights and are treated in line with nationals of the host state for the purpose of social security. They do not create a harmonised system but coordinate the different social security systems of individual member states.
3. The EU Coordination Regulations will continue to apply after the end of the transition period only for those who are covered by the Social Security Coordination provisions of the Withdrawal Agreement. Those in full scope will continue to be covered by the EU Coordination Regulations in full, and those in partial scope or with derived rights as family members and survivors will continue to be covered to the extent that they derive rights in these capacities.
4. For the purpose of this guidance, the EU Coordination Regulations are:
 - a. Regulation (EC) No 883/2004, on the coordination of social security systems; and
 - b. Regulation (EC) No 987/2009, the implementing regulation for regulation 883/2004.

The below regulations, although updated by those above, will also continue to apply in specific circumstances:

- c. Regulation (EEC) No 1408/71, on the application of social security schemes to employed, and self-employed, persons and to members of their families;
- d. Regulation (EEC) No 574/72, the implementing regulation for regulation 1408/71; and
- e. Regulation (EC) No 859/2003, which extends the provisions of regulations 1408/71 and 574/72 to nationals of third countries not already covered by those provisions solely on the ground of their nationality⁵¹.

⁵¹ Denmark did not adopt the modernisation regulations that extend the EU Coordination Regulations to non EU citizens (third country nationals), who are not in scope of the provisions as family members of an EU citizen.

5. The EU Coordination Regulations provide for:
 - a. **Aggregation**: using periods of national insurance, residence or work completed in one state to meet the minimum qualifying period in another when determining eligibility for certain social security benefits,
 - b. **Applicable legislation**: determining which state's legislation a person is subject to, to determine in which state they pay social security contributions,
 - c. **Competency**: determining which state is responsible for paying social security benefits and healthcare,
 - d. **Equal treatment**: ensuring that persons are treated the same as nationals of the host state for social security benefits in scope of the EU Coordination Regulations,
 - e. **Export**: provisions to allow the payment of certain social security benefits from one state to persons who reside in another state, as if they were resident in the state responsible.

Scope of the EU Coordination Regulations

6. The EU Coordination Regulations apply to nationals of the EU, EEA EFTA states and Switzerland⁵², and their family members, who are living in one of these countries. In this chapter, references to EU or member state should be read as including the aforementioned states. When considering these regulations under the Withdrawal Agreement the UK is regarded as part of this list. Also covered are stateless persons or refugees who are or have been insured by one of these states, and persons who are not nationals of the listed countries (third country nationals), who reside legally under EU law in one of the states listed above, and who have moved between these countries.

Aggregation

7. The aggregation provision allows periods of national insurance contributions, employment, self-employment or residence completed under the legislation of one member state to be treated as if they were completed in the competent member state for the purpose of entitlement to certain benefits. This is mainly for the purpose of meeting minimum qualifying periods for certain benefits, e.g. State Pensions, contribution based Job Seeker's Allowance and contributory Employment and Support Allowance.
8. For example: A French national who had 7 qualifying years under UK legislation, and 38 years under French legislation, applies to the UK when they reach pension age to claim their UK State Pension. While the 7 years worked in the UK does not meet the minimum qualifying period for a UK State Pension (10 years),

⁵² To note, the EEA EFTA states and Switzerland do not extend the provisions of the EU Coordination Regulations to third country nationals (persons who are not nationals of the EU, EEA EFTA or Switzerland).

the UK authority must take into account the years worked in France to meet this threshold and the French national would receive a proportion of a UK State Pension based on their UK national insurance record.

Applicable Legislation

9. The EU Coordination Regulations ensure that an individual to whom the regulations apply is subject to only one state's legislation at a time. This means, for example, that a worker (and their employer) need only pay social security contributions (National Insurance Contributions (NICs) in the UK) to one member state at a time. Typically, the state which an individual is subject to the legislation of is the one in which they work and reside. If these are different then it is typically the state in which they work if they pursue an economic activity, or reside where they do not pursue an economic activity.
10. Employed and self-employed people are normally subject to the legislation where their work activity is carried out. The main exceptions to this are posted workers (employees who are sent by their employer to work temporarily in another EU member state) who remain subject to the legislation of the state of their employer, as well as certain categories of workers, such as those who work in two or more states or civil servants.

Competency

11. The EU Coordination Regulations contain special provisions for the various categories of benefit, which include provisions to determine which state is responsible – or “competent” – for the payment of certain benefits and healthcare cover for those in scope of the EU Coordination Regulations whose social security situation is not confined to a single state or who move to live or work in another state. It is important to consider relevant family members when determining competency.
12. The rules on determining competency under the EU Coordination Regulations are specific to each category of benefit. Full guidance on determining competency is set out in individual benefit guidance.

Equal Treatment

13. This provision means that an individual in scope of the EU Coordination Regulations will be entitled to the same benefits, and be subject to the obligations under the legislation of the host state, on the same terms as nationals of the host state.
14. For example, those in scope of these regulations who are resident in the UK are entitled to a UK-issued European Health Insurance Card (EHIC), to cover needs arising treatment while temporarily in an EU member state, on the same terms as the nationals of that EU member state. Another example is an individual, in receipt of a UK State Pension, who moves to the EU on a permanent basis and is

entitled to a UK-issued S1 form which certifies their entitlement to state healthcare on the same basis as a national of that country.

Benefits paid outside of the competent Member State

15. The provision on export (waiving of residence rules) allows for the payment of certain cash benefits outside of the competent state. The payment of these benefits must be without any reduction, amendment, suspension, withdrawal or confiscation as a result of the individual, or members of their family, residing outside of the competent state for payment of the benefit. All eligibility requirements for the benefit must still be met.

16. For example, where an individual, who is in scope of the regulations and is in receipt of a UK State Pension, resides in an EU member state this will increase in line with those in the UK (uprated). This provision also covers the receipt of UK Child Benefit for children who reside in an EU member state, but where the UK is competent.

Useful links

The Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

Regulation (EC) No 883/2004:

<https://www.legislation.gov.uk/eur/2004/883>

Regulation (EC) No 987/2009:

<https://www.legislation.gov.uk/eur/2009/987>

Council Regulation (EEC) No 1408/71

<https://www.legislation.gov.uk/eur/1971/1408>

Council Regulation (EEC) No 574/72

<https://www.legislation.gov.uk/eur/1972/574>

Regulation (EC) No 859/03

https://www.legislation.gov.uk/eur/2003/859/pdfs/eur_20030859_adopted_en.pdf

EU Free Movement Directive, 2004/38/EC.

<https://www.legislation.gov.uk/eudr/2004/38>

Guidance -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867664/free-movement-rights-direct-family-members-of-EEA-nationals-v9.0ext.pdf

DWP decision makers' guidance on the EU Coordination Regulations

<https://www.gov.uk/government/publications/decision-makers-guide-vol-2-international-subjects-staff-guide>

Glossary

- Citizens' rights provisions – The provisions under Part Two of the Withdrawal Agreement.
- Durable partner - There is no definitive definition of “durable relationship” under EU law, so government immigration guidance should be considered. This sets out that there should be evidence of “the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship)”
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>
- EEA – European Economic Area, see <https://www.gov.uk/eu-eea> Includes the EU plus Iceland, Liechtenstein and Norway.
- EFTA – European Free Trade Association see <https://www.efta.int/about-efta/european-free-trade-association>. Includes Iceland, Liechtenstein, Norway and Switzerland.
- EESSI – an IT system that helps social security institutions across the EU to exchange information.
- EHIC – scheme under which a person has a right to treatment which becomes medically necessary during a temporary stay in another Member State to prevent the person being forced to return home early.
- EU – European Union
- EU Coordination Regulations – the EC social security coordination regulations that coordinate the social security systems of EU member states for citizens moving between EU member states. Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 – UK applies these to UK national and EU citizens moving within the EU. Most EU member states also apply these to third country nationals (TCNs) who are legally in a cross-border situation involving the UK and an EU member state (but not Denmark)
- Council Regulation (EEC) No 1408/71 and Council Regulation (EEC) No 574/72 - EU member states (except Denmark) and the UK apply these to TCNs in cross-border situation where this includes the UK and one or more MS's.
- E101 - document issued to a third country national which shows which Member State's legislation applies when they are working in one or more Member States.
- E106 - document issued to a third country national who has a right to access healthcare when residing or working in another Member State outside of the Member State that is competent for their healthcare costs.
- Habitually resident – [see DMG guidance](#)
- Ordinarily resident - A person is ordinarily resident if they are normally residing in the UK (apart from temporary or occasional absences), and their residence here has been adopted voluntarily and for settled purposes as part of the regular order of their life for the time being, whether for short or long duration. See guidance https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736849/Ordinary_residence_tool.pdf
- PDA1 – document issued to an EU citizen which shows which Member State's legislation applies when they are working in one or more Member States.

- PRC – Provisional Replacement Certificate (PRC) to prove your entitlement to the EHIC if you travel to Europe without your EHIC but then need medical treatment during your visit.
- Right to reside – an individual has the right to live in the UK in accordance with EU law. <https://www.gov.uk/right-to-reside>
- Subject to the legislation of - The EU social security coordination regulations ensure that an individual is only “subject to the legislation of” one Member State at a time. Typically, an individual is “subject to the legislation of” the state in which they work and reside. If these are different, it is typically the state in which they work (if they pursue an economic activity) or reside (where they do not pursue an economic activity).
- S1 – document issued to an EU citizen who has a right to access healthcare when residing or working in an EU member state outside of the Member State that is competent for their healthcare costs.
- S2 – document issued to a person who has a right to obtain specific planned treatment in an EU member state.
- TFEU - Treaty on the Functioning of the European Union.
- Transition period – The period from the 1 February 2020 until 31 December 2020. This followed the UK leaving the EU on 31 January 2020.